09-000-5359

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 29 2009

OFFICE OF
AIR AND RADIATION

The Honorable Collin C. Peterson
Chairman
Committee on Agriculture
U.S. House of Representatives
Washington, D.C. 20515-6001

Dear Chairman Peterson:

Thank you for your April 13, 2009, letter to Administrator Jackson in which you shared your concerns on the Environmental Protection Agency's (EPA) aquatic pesticide rule, measurement of indirect land use changes under the proposed Renewable Fuels Standard (RFS) rulemaking, and consideration of Growth Energy's waiver application for higher level ethanol blends. The Administrator asked that I respond to your letter.

With respect to the aquatic pesticide rule, as you know the 6th Circuit Court of Appeals, in The National Cotton Council of America et al. v. United States Environmental Protection Agency, vacated EPA's final rule regarding the application of pesticides to waters of the United States. On April 9, 2009, the U.S. Department of Justice filed a motion to stay issuance of the Court's mandate for two years to provide EPA time to develop, propose and issue a final National Pollutant Discharge Elimination System (NPDES) general permit for pesticide applications, for NPDES authorized States to develop their NPDES permits, and to provide outreach and education to the regulated community.

EPA recognizes the significant implications this vacatur will have. The Agency estimates that the ruling will affect approximately 365,000 pesticide applicators that perform 5.6 million pesticide applications annually. EPA plans to work closely with states, environmental organizations, and the regulated community in developing a general permit that is protective of the environment and public health.

Regarding the measurement of indirect land use as part of the RFS proposed rule, we also recognize that it is important to address questions regarding the science of measuring indirect impacts, particularly on the topic of uncertainty. For this reason, we have developed a methodology that uses the very best tools and science available, utilizes input from experts and stakeholders from a multitude of disciplines, and maximizes the transparency of our approach and our assumptions in the proposed rule. Additionally, although our lifecycle analysis relies exclusively on peer-reviewed models and data, between the proposal and final rule, we will

conduct additional peer-reviews of key components of our analysis, including use of satellite data to project the type of future land use changes, methods to account for the variable timing of greenhouse gas (GHG) emissions, and how the several models we have relied upon are used together to provide overall lifecycle GHG estimates. We are also planning a two-day public workshop on lifecycle analysis to assure full understanding of the analyses conducted, the issues addressed, and the options that are discussed.

And finally, regarding higher ethanol blends, the Agency is taking an active role in implementing the new renewable fuel mandates set out by Congress. On May 5, 2009, the Administrator issued the proposed rulemaking that addresses the analytical and implementation requirements given to EPA. We look forward to the public comment process to continue working with the full range of stakeholders in completing this rulemaking activity. The ethanol waiver request we received from Growth Energy on March 6, 2009, is also part of this overall effort. A notice of its receipt was published in the Federal Register on April 21, 2009. The issues raised by the waiver request are very important and complex. We anticipate a significant number of comments from a wide range of stakeholders in response to our request for public comment. In addition, we continue to work closely with the U.S. Department of Energy and the U.S. Department of Agriculture on this issue. We will take your comments and any other relevant information into consideration, and, using the best available technical data, make a determination on the Growth Energy waiver request and complete the RFS rule. Additionally, we will place your April 13, 2009, letter into the respective public dockets for the waiver request and RFS rulemaking.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at 202-564-3668.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Acting Assistant Administrator

AC-11-002-1414

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 19 2012

OFFICE OF
AIR AND RADIATION

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Chairman Issa:

Thank you for your letter dated December 6, 2011, co-signed by Chairman James Lankford, regarding the U.S. Environmental Protection Agency's estimate of methane emissions from unconventional natural gas development requiring hydraulic fracture. We welcome the opportunity to discuss the emissions data and our approach to developing these estimates.

The EPA updates the U.S. Inventory of Greenhouse Gas Emissions annually based on the best available data and information. The update made in 2011 to the emissions estimates for the natural gas production sector was particularly important because previous estimates were based on a joint 1996 EPA/Gas Research Institute study, when hydraulically fractured gas wells were not common. The revised estimate is based on more current data from multiple companies representing over a thousand production wells across the United States. The EPA is confident this estimate more accurately reflects current industry production practices by including, for the first time, a robust estimate of emissions from hydraulically fractured gas well completions.

While the EPA is confident that our current estimates are based on the best information available when they were released, we will continue to refine and improve upon them as new data and information become available. Most recently, the EPA received additional data and information as part of the formal public notice and comment process for the proposed New Source Performance Standards for volatile organic compounds (VOCs). The EPA plans to fully evaluate all data and information received through this process. In addition, oil and gas facilities subject to Subpart W of the Greenhouse Gas Reporting Program began data collection efforts at the beginning of this year and will begin reporting their emissions data to the EPA in September 2012. We expect that this information will be invaluable and will improve our understanding of the location and magnitude of oil and gas emissions sources.

Enclosed you will find detailed responses to each of the specific questions raised in the letter. I hope the information provided is useful.

Again, thank you for your letter and interest in the EPA's emissions estimates. If you have further questions, please contact me or have your staff contact Diann Frantz in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

Gina McCarthy
Assistant Administrator

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Minority Member
Committee on Oversight and Government Reform

The Honorable Gerry Connolly
Ranking Minority Member
Subcommittee on Technology, Information Policy,
Intergovernmental Relations and Procurement Reform

Answers to Questions From Committee on Oversight and Government Reform's December 6, 2011 Letter

1. Does EPA disagree with the way CERA represented EPA's methodology and assumptions in its report?

In the CERA report and other recent studies, there appears to be a key misunderstanding in the way the U.S. Greenhouse Gas Inventory calculates methane emissions from the oil and gas production sector. Consistent with the overall approach used in the GHG inventory, EPA develops an emissions factor that represents unmitigated emissions per unit (e.g., equipment or operation). This factor is then used to calculate a national emissions total based on activity data (e.g., equipment counts). It is very important to note that EPA then adjusts this total by the amount of methane that is actually not emitted (i.e., that is instead flared or controlled with certain technologies and practices due to voluntary action and State regulations) in order to develop a national emissions total for a given source category and sector. Specifically, the development of the 2009 emissions estimates (published in April 2011) for unconventional natural gas wells requiring hydraulic fracture involved three key steps:

- Develop an unmitigated national emission factor for an uncontrolled hydraulically fractured gas well (that is not capturing or flaring the gas) based on best available data from independent sources representing over one thousand wells across the United States.
- Adjust this factor by the average methane content of gas (on a regional basis), multiply by the number of wells in each region, and then sum the regional totals to calculate total unmitigated methane emissions from the over 8,000 completions and workovers with hydraulic fracturing in the U.S. in 2009.
- Calculate the amount of the methane that is not emitted, using data on voluntary action and State regulations in order to develop a more accurate picture of actual emissions from this source category and sector.

Based on this approach, the 1990-2009 U.S. Inventory of Greenhouse Gas Emissions and Sinks (published in April 2011) estimated that approximately 9.4 billion cubic feet of methane was emitted from hydraulically fractured wells in 2009. EPA believes this is a substantial improvement over previous estimates and more accurately reflects current industry practices. Attachment 1 shows the detailed calculations performed by EPA to derive this estimate.

Some of the specific misunderstandings and inaccuracies in the CERA report include:

- First, the CERA report asserts that the emissions estimates were based on four data points. This is an inaccurate characterization of the basis for EPA's estimate. The EPA emission factor was based on four independent studies that together contained over a thousand data points. Three of the studies provided a direct industry estimate of the emissions reduced by companies through a completion gas capture technology, Reduced Emission Completions (RECs) or Green Completions, from over a thousand wells across the United States. The fourth source calculated a nation-wide estimate of gas well completion venting based on an industry estimate. EPA used this estimate to develop an emission factor based on activity data from the American Petroleum Institute's *Basic Petroleum Handbook*.

- Second, CERA erroneously states that the GHG inventory assumes that 51% of completion methane is flared and the rest is vented. In fact, the inventory assumes that 51% of the methane from hydraulically fractured gas well completions and workovers are flared due to regulations, 36% of the methane is voluntarily reduced as reported by the industry and that only 13% is vented. This is significantly different than CERA's assertion that the GHG inventory assumes that 49% of methane is vented.
- Finally, CERA erroneously asserts that the approximate doubling of methane emissions in the inventory was due to the increased emissions factor for completions, whereas the larger factor was actually liquids unloading. Liquids unloading occurs when operators vent natural gas to reduce the liquids accumulation in the well bore that inhibits the production of natural gas. This is typically an issue for older conventional gas wells. Methane emissions from natural gas systems in 2008 increased by 285 billion cubic feet from the 2010 to the 2011 U.S. Inventory. Sixteen percent of that increase was attributable to the addition of emissions from gas well completions and workovers with hydraulic fracturing and 79 percent was attributable to an improvement to the emission factor for liquids unloading.

To avoid misinterpretation of EPA's approach, we intend to modify the GHG Inventory documentation to help clarify the proper use of these factors in the future.

2. The EPA Background Technical Support Document states "Over the years, new data and increased knowledge of industry operations and practices have highlighted the fact that emissions estimates from the EPA/GRI study are outdated and potentially understated for some emissions sources"

a. What indication was there that the methodology used in the EPA/GRI study was flawed?
b. What changes were made in the estimation methodology for the 2010 report to improve the accuracy of the results?

Hydraulically fractured gas well completions and workovers are the majority of completions and workovers today, but were not common during the development of the 1996 EPA/GRI Study. The GRI study estimated an emission factor for gas well completions by making several key assumptions. These assumptions were based on the data and knowledge of industry practices available at the time that are no longer applicable today. These assumptions included:

- Emissions that occur during the well completion are equal to one day of the average gas production rate per gas well in 1992 based on the American Gas Association's *Gas Facts.*
- All completion emissions are flared (reducing the methane emissions from each completion by approximately 98 percent).

Since the publication of the GRI study, the number of hydraulically fractured gas well completions has nearly doubled, from approximately 4,600 to 9,000 hydraulically fractured wells. Through our extensive interactions with oil and gas companies and industry experts and through a review of best available data, EPA became aware that the assumptions made in the 1996 EPA/GRI study did not accurately characterize methane emissions from hydraulically fractured gas wells. In particular:

- The 16.97 million cubic feet per year average gas production rate in 1992, which GRI used as a surrogate for the average completion flow rate, includes a large number of marginal wells. Marginal low pressure wells have significantly less gas production than newly completed hydraulically fractured wells. In 2010 the average gas production from hydraulically fractured gas wells was 65.7 million cubic feet per year.
- Significant quantities of gas are produced during the completion process for a hydraulically fractured gas well, in particular during the flowback period. In 2004, companies began sharing information with EPA on voluntary activities to reduce emissions from hydraulically fractured gas well completions, referred to as Reduced Emission Completions. Companies reported that the extended flowback time (as compared to conventional completions) and increased volume of natural gas during the flowback period, made it cost-effective to bring portable equipment on-site to capture the increased natural gas for market. EPA currently assumes an average flowback period of 3 to 10 days for hydraulically fractured.
- Finally, through interactions with companies at EPA and industry events as well as public data and experiences shared by the industry, we are aware that not all companies are flaring the gas. In fact, many companies are either capturing through RECs or venting the gas that occurs during the completion of hydraulically fractured gas wells.

On the basis of the new information reported by companies carrying out hydraulic fracturing and RECs, EPA developed an emission factor specifically for hydraulically fractured gas well completions. This factor was used in the Technical Support Document for Subpart W of Part 98, GHG reporting rule, and also in the 1990-2009 Inventory (published in April 2011). A complete list of improvements to the 2011 inventory are described in detail in the Technical Note published with inventory, available at - http://www.epa.gov/methane/downloads/TechNote_Natural%20gas_4-15-11.pdf

3. How did EPA choose whether to round to the nearest hundred, thousand, or ten thousand for each of the four data points? Why did EPA choose not to round the final unconventional well emission estimate, 9175 Mcf/completion?

As described previously, EPA used information from four data sets representing a large number of wells to generate the new emission factor. The data from these wells collectively indicate that the true average emission rate for a hydraulically fractured well completion is substantially higher (greater than two orders of magnitude) than the 1996 GRI/EPA emission factor that is applicable to conventional well completions. These data also indicate that there is a high degree of variability in emission rates across hydraulically fractured well completions due to geology, technology and operating conditions. The rounding to a single significant digit for the average emission rates calculated for each of the four data sets reflects this variability. As the variability was already reflected through the rounding of the rate developed from each data set, EPA elected not to round the final average calculated from the four rates. Had EPA rounded the final number, it would be 9,000 Mcf per completion or 2% lower. If EPA had not rounded the results of the initial studies, the final average well emission factor would be 11,057 Mcf/completion, or 21% higher. EPA will consider the different approaches to rounding consistency in future updates of the national inventory.

4. Does EPA have any information to support its assumption that no completions were flared in Texas, New Mexico, and Oklahoma? If so, please explain and provide the information that supports this assumption.

It is inaccurate to say that EPA assumed that no completions were flared in Texas, New Mexico and Oklahoma. The calculation of reductions applicable to gas well completions and workovers with hydraulic fracturing has two elements; voluntary reductions and reductions due to state regulations.

- Voluntary reductions include both reduced emission completion and flaring reductions reported by the industry. All voluntary reductions occurring in Texas, Oklahoma, and New Mexico that have been reported to EPA by the industry are captured in the inventory. EPA estimates that 36% of total potential methane emissions from completions are reduced through voluntary actions taken by industry.
- EPA developed a national-level estimate of flaring based on its knowledge of state regulations requiring flaring at the time. When EPA developed the emission factor, Texas, New Mexico and Oklahoma did not have regulations mandating flaring. State regulations and information on those regulations have expanded since EPA developed its estimate. EPA will continue to evaluate this approach to determine if a more detailed state-level estimate can be developed in the future. EPA estimates that 51% of total potential methane emissions from completions are reduced through regulation.

The end result is that EPA estimates that only 13% of total potential methane emissions are vented to the atmosphere.

5. Did any EPA staff raise concerns about the new methodology used to estimate the methane emissions from natural gas wells? If so, please explain their concerns and provide all relevant documents and communications.

EPA discusses uncertainty for all of our emissions estimates presented in the U.S. GHG Inventory and strives to account for and manage this uncertainty. Consistent with IPCC and UNFCCC reporting guidance, EPA presents both qualitative and quantitative information on its assessment of the uncertainties associated with its emissions estimates for each source category. For more information, please see the following sections of the U.S. GHG Inventory.

- Annex 7: Uncertainty of the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009. http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Annex-7.pdf
- Pages 3-45 and 3-46 from the section on energy related greenhouse gas emissions, http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdf

6. Did any EPA staff raise concerns about the quality of the data used to estimate the methane emissions from natural gas wells? If so, please explain their concerns and provide all relevant documents and communications.

EPA discusses uncertainty for all of our emissions estimates presented in the U.S. GHG Inventory and strives to account for and manage this uncertainty. Consistent with IPCC and UNFCCC reporting guidance, EPA presents both qualitative and quantitative information on its assessment of the uncertainties associated with its emissions estimates for each source category. For more information, please see the following sections of the U.S. GHG Inventory.

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- Pages 3-45 and 3-46 from the section on energy related greenhouse gas emissions http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdf

7. Is EPA aware of any additional data which could substantiate (or call into question) its methane emissions estimates? Has EPA requested any additional data? Has EPA been provided with any additional data?

EPA's revised emission estimates have undergone extensive public review, and EPA has encouraged companies and other stakeholders to provide data to help refine the GHG emissions estimates. The first review took place as part of the public notice and comment process for the proposal of subpart W of Part 98, GHG Reporting rule, where the emission factor for hydraulically fractured well completions was originally published. The second review was conducted during the public review process for the 1990-2009 U.S. Inventory of Greenhouse Gas Emissions Report (early 2011). In addition, EPA held a stakeholder webcast in July 2011, including oil and gas companies, trade associations, and other organizations to discuss potential areas for improvement of the natural gas category of the GHG Inventory, including the emissions estimates for well completions.

Since July, several companies provided additional data on other aspects of the oil and gas inventory but did not provide new information on the emission factor for hydraulically fractured wells. In November 2011, URS Corporation submitted an analysis including potentially relevant data from multiple companies to EPA as part of the national inventory preparation process, and also as part of the formal public notice and comment process of the proposed oil and gas new source performance standards for VOCs. EPA is currently reviewing these data.

8. Does EPA have any plans to revisit its 2010 methane emissions estimates? Please describe those plans.

As noted in #7, EPA recently received additional data from URS Corporation as part of the national inventory preparation process and also as part of the formal public notice and comment process of the proposed oil and gas new source performance standards (NSPS) for VOCs. EPA plans to carefully evaluate this and all other additional relevant information provided to us during the NSPS public comment period. This information will first be evaluated against the data and

assumptions used in the impacts analysis to the proposed rule to determine if any updates should be made to the final rule analysis as a result of this information. Subsequently, all relevant updates will then be incorporated, as applicable, in the next cycle of the U.S. GHG Inventory.

9. Has EPA considered reverting to the estimation methodologies used prior to 2010 for future estimates?

No. EPA carefully reviewed the original gas well completion emission factor used in the U.S. Inventory prior to making the update to the 9,175 Mcf per completion. As discussed in our response to question 2 above, the original emission factor for gas well completions from the 1996 EPA/GRI study no longer represents the diversity of gas production practices in use today, and the emission rates associated with these practices.

10. Which proposed or potential EPA regulations will be based, in whole or in part, on the 2010 EPA estimates of methane emissions from natural gas development?

These and other data informed the analysis supporting the proposed New Source Performance Standards, which would reduce harmful air pollution (VOCs and Hazardous Air Pollutants) from the oil and natural gas industry while allowing continued, responsible growth in U.S. oil and natural gas production. More information on this proposed rule, including the Regulatory Impact Analysis is available at http://www.epa.gov/airquality/oilandgas. Additionally, these data were used to inform development of Subpart W of the GHG Reporting Rule.

11. Does EPA disagree with the findings of the URS Corporation study of methane emissions from natural gas well completions? In light of the major discrepancy between the EPA and URS estimates, will EPA reconsider revisiting its methane emissions estimates?

EPA received the findings of the URS Corporation recently. We plan to carefully evaluate the URS Corporation study and all other additional relevant information provided during the NSPS public comment period on this emissions estimate. This information will first be evaluated against the data and assumptions used in the impacts analysis to the proposed rule to determine if any updates should be made to the final rule analysis as a result of this information. Subsequently, all relevant updates will then be incorporated, as applicable, in the next cycle of the GHG Inventory.

12. Please provide all documents referring or relating to EPA's calculation of the 2011 estimate of methane emissions during natural gas development.

More detailed information on the development of this factor can be found in the following documents:

- The Technical Support Document to Subpart W of Part 98, Greenhouse Gas Reporting Rule (http://www.epa.gov/climatechange/emissions/downloads10/Subpart-W_TSD.pdf).
- The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 (April 2011), starting on page 3-43 (http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdfl)

- Annex 3: Methodological Descriptions for Additional Source or Sink Categories, starting on page A-147 (http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Annex-3.pdf)
- The Technical Note published with the 2011 inventory that provides further details on the complete list of improvements made (http://www.epa.gov/methane/downloads/TechNote_Natural%20gas_4-15-11.pdf)

Attachment 1

Data for Unconventional Completions and Workovers in 2009.
For 1990-2009 GHG inventory

Activity Factors		
Well Count	(Wells)	50,434
Well Completions	(Completions/year)	4,169
Well Workovers	(workovers/year)	5,043
Emission Factors and Adjustments		
Well Completions	(scf/completion)	9,175,000
Well Workovers	(scf/workover)	9,175,000
Regional methane content	(percent)	Ranges from 78.4% to 91.9%
*Emissions**		
Well Completions	(MMscf)	30,962.21
Well Workovers	(MMscf)	37,184.52
TOTAL UNCONTROLLED	**(MMscf)**	**68,146.73**
Voluntary Reductions	**(MMscf)**	24,235
Regulation Reductions		
Well Completions	(MMscf)	15,659
Well Workovers	(MMscf)	18,805
Regulation Subtotal	(MMscf)	34,464
NET EMISSIONS	**(MMscf)**	**9,448**

* The emissions are calculated on a regional basis by multiplying the number of well completions and workovers in each region by the appropriate emission factor above, and adjusting for methane content of the natural gas in that region. These regional methane emissions estimates are then summed to a national number, presented in the table as "Total Uncontrolled."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 19 2012

OFFICE OF
AIR AND RADIATION

The Honorable James Lankford
Chairman
Subcommittee on Technology, Information Policy,
Intergovernmental Relations and Procurement Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Chairman Lankford:

Thank you for your letter, dated December 6, 2011, co-signed by Chairman Darrell Issa, regarding the U.S. Environmental Protection Agency's (EPA's) estimate of methane emissions from unconventional natural gas development requiring hydraulic fracture. We welcome the opportunity to discuss the emissions data and our approach to developing these estimates.

The EPA updates the U.S. Inventory of Greenhouse Gas Emissions annually based on the best available data and information. The update made in 2011 to the emissions estimates for the natural gas production sector was particularly important because previous estimates were based on a joint 1996 EPA/Gas Research Institute study, when hydraulically fractured gas wells were not common. The revised estimate is based on more current data from multiple companies representing over a thousand production wells across the United States. The EPA is confident this estimate more accurately reflects current industry production practices by including, for the first time, a robust estimate of emissions from hydraulically fractured gas well completions.

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Sincerely,

Gina McCarthy
Assistant Administrator

Enclosure

cc: The Honorable Elijah E. Cummings
Ranking Minority Member
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- Adjust this factor by the average methane content of gas (on a regional basis), multiply by the number of wells in each region, and then sum the regional totals to calculate total unmitigated methane emissions from the over 8,000 completions and workovers with hydraulic fracturing in the U.S. in 2009.
- Calculate the amount of the methane that is not emitted, using data on voluntary action and State regulations in order to develop a more accurate picture of actual emissions from this source category and sector.

Based on this approach, the 1990-2009 U.S. Inventory of Greenhouse Gas Emissions and Sinks (published in April 2011) estimated that approximately 9.4 billion cubic feet of methane was emitted from hydraulically fractured wells in 2009. EPA believes this is a substantial improvement over previous estimates and more accurately reflects current industry practices. Attachment 1 shows the detailed calculations performed by EPA to derive this estimate.

Some of the specific misunderstandings and inaccuracies in the CERA report include:

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- Second, CERA erroneously states that the GHG inventory assumes that 51% of completion methane is flared and the rest is vented. In fact, the inventory assumes that 51% of the methane from hydraulically fractured gas well completions and workovers are flared due to regulations, 36% of the methane is voluntarily reduced as reported by the industry and that only 13% is vented. This is significantly different than CERA's assertion that the GHG inventory assumes that 49% of methane is vented.
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To avoid misinterpretation of EPA's approach, we intend to modify the GHG Inventory documentation to help clarify the proper use of these factors in the future.

2. The EPA Background Technical Support Document states "Over the years, new data and increased knowledge of industry operations and practices have highlighted the fact that emissions estimates from the EPA/GRI study are outdated and potentially understated for some emissions sources"

a. What indication was there that the methodology used in the EPA/GRI study was flawed?
b. What changes were made in the estimation methodology for the 2010 report to improve the accuracy of the results?

Hydraulically fractured gas well completions and workovers are the majority of completions and workovers today, but were not common during the development of the 1996 EPA/GRI Study. The GRI study estimated an emission factor for gas well completions by making several key assumptions. These assumptions were based on the data and knowledge of industry practices available at the time that are no longer applicable today. These assumptions included:

- Emissions that occur during the well completion are equal to one day of the average gas production rate per gas well in 1992 based on the American Gas Association's *Gas Facts.*
- All completion emissions are flared (reducing the methane emissions from each completion by approximately 98 percent).

Since the publication of the GRI study, the number of hydraulically fractured gas well completions has nearly doubled, from approximately 4,600 to 9,000 hydraulically fractured wells. Through our extensive interactions with oil and gas companies and industry experts and through a review of best available data, EPA became aware that the assumptions made in the 1996 EPA/GRI study did not accurately characterize methane emissions from hydraulically fractured gas wells. In particular:

- The 16.97 million cubic feet per year average gas production rate in 1992, which GRI used as a surrogate for the average completion flow rate, includes a large number of marginal wells. Marginal low pressure wells have significantly less gas production than newly completed hydraulically fractured wells. In 2010 the average gas production from hydraulically fractured gas wells was 65.7 million cubic feet per year.
- Significant quantities of gas are produced during the completion process for a hydraulically fractured gas well, in particular during the flowback period. In 2004, companies began sharing information with EPA on voluntary activities to reduce emissions from hydraulically fractured gas well completions, referred to as Reduced Emission Completions. Companies reported that the extended flowback time (as compared to conventional completions) and increased volume of natural gas during the flowback period, made it cost-effective to bring portable equipment on-site to capture the increased natural gas for market. EPA currently assumes an average flowback period of 3 to 10 days for hydraulically fractured.
- Finally, through interactions with companies at EPA and industry events as well as public data and experiences shared by the industry, we are aware that not all companies are flaring the gas. In fact, many companies are either capturing through RECs or venting the gas that occurs during the completion of hydraulically fractured gas wells.

On the basis of the new information reported by companies carrying out hydraulic fracturing and RECs, EPA developed an emission factor specifically for hydraulically fractured gas well completions. This factor was used in the Technical Support Document for Subpart W of Part 98, GHG reporting rule, and also in the 1990-2009 Inventory (published in April 2011). A complete list of improvements to the 2011 inventory are described in detail in the Technical Note published with inventory, available at -
http://www.epa.gov/methane/downloads/TechNote_Natural%20gas_4-15-11.pdf

3. How did EPA choose whether to round to the nearest hundred, thousand, or ten thousand for each of the four data points? Why did EPA choose not to round the final unconventional well emission estimate, 9175 Mcf/completion?

As described previously, EPA used information from four data sets representing a large number of wells to generate the new emission factor. The data from these wells collectively indicate that the true average emission rate for a hydraulically fractured well completion is substantially higher (greater than two orders of magnitude) than the 1996 GRI/EPA emission factor that is applicable to conventional well completions. These data also indicate that there is a high degree of variability in emission rates across hydraulically fractured well completions due to geology, technology and operating conditions. The rounding to a single significant digit for the average emission rates calculated for each of the four data sets reflects this variability. As the variability was already reflected through the rounding of the rate developed from each data set, EPA elected not to round the final average calculated from the four rates. Had EPA rounded the final number, it would be 9,000 Mcf per completion or 2% lower. If EPA had not rounded the results of the initial studies, the final average well emission factor would be 11,057 Mcf/completion, or 21% higher. EPA will consider the different approaches to rounding consistency in future updates of the national inventory.

4. Does EPA have any information to support its assumption that no completions were flared in Texas, New Mexico, and Oklahoma? If so, please explain and provide the information that supports this assumption.

It is inaccurate to say that EPA assumed that no completions were flared in Texas, New Mexico and Oklahoma. The calculation of reductions applicable to gas well completions and workovers with hydraulic fracturing has two elements; voluntary reductions and reductions due to state regulations.

- Voluntary reductions include both reduced emission completion and flaring reductions reported by the industry. All voluntary reductions occurring in Texas, Oklahoma, and New Mexico that have been reported to EPA by the industry are captured in the inventory. EPA estimates that 36% of total potential methane emissions from completions are reduced through voluntary actions taken by industry.
- EPA developed a national-level estimate of flaring based on its knowledge of state regulations requiring flaring at the time. When EPA developed the emission factor, Texas, New Mexico and Oklahoma did not have regulations mandating flaring. State regulations and information on those regulations have expanded since EPA developed its estimate. EPA will continue to evaluate this approach to determine if a more detailed state-level estimate can be developed in the future. EPA estimates that 51% of total potential methane emissions from completions are reduced through regulation.

The end result is that EPA estimates that only 13% of total potential methane emissions are vented to the atmosphere.

5. Did any EPA staff raise concerns about the new methodology used to estimate the methane emissions from natural gas wells? If so, please explain their concerns and provide all relevant documents and communications.

EPA discusses uncertainty for all of our emissions estimates presented in the U.S. GHG Inventory and strives to account for and manage this uncertainty. Consistent with IPCC and UNFCCC reporting guidance, EPA presents both qualitative and quantitative information on its assessment of the uncertainties associated with its emissions estimates for each source category. For more information, please see the following sections of the U.S. GHG Inventory.

- Annex 7: Uncertainty of the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009. http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Annex-7.pdf
- Pages 3-45 and 3-46 from the section on energy related greenhouse gas emissions, http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdf

6. Did any EPA staff raise concerns about the quality of the data used to estimate the methane emissions from natural gas wells? If so, please explain their concerns and provide all relevant documents and communications.

EPA discusses uncertainty for all of our emissions estimates presented in the U.S. GHG Inventory and strives to account for and manage this uncertainty. Consistent with IPCC and UNFCCC reporting guidance, EPA presents both qualitative and quantitative information on its assessment of the uncertainties associated with its emissions estimates for each source category. For more information, please see the following sections of the U.S. GHG Inventory.

- Annex 7: Uncertainty of the Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009. http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Annex-7.pdf
- Pages 3-45 and 3-46 from the section on energy related greenhouse gas emissions http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdf

7. Is EPA aware of any additional data which could substantiate (or call into question) its methane emissions estimates? Has EPA requested any additional data? Has EPA been provided with any additional data?

EPA's revised emission estimates have undergone extensive public review, and EPA has encouraged companies and other stakeholders to provide data to help refine the GHG emissions estimates. The first review took place as part of the public notice and comment process for the proposal of subpart W of Part 98, GHG Reporting rule, where the emission factor for hydraulically fractured well completions was originally published. The second review was conducted during the public review process for the 1990-2009 U.S. Inventory of Greenhouse Gas Emissions Report (early 2011). In addition, EPA held a stakeholder webcast in July 2011, including oil and gas companies, trade associations, and other organizations to discuss potential areas for improvement of the natural gas category of the GHG Inventory, including the emissions estimates for well completions.

Since July, several companies provided additional data on other aspects of the oil and gas inventory but did not provide new information on the emission factor for hydraulically fractured wells. In November 2011, URS Corporation submitted an analysis including potentially relevant data from multiple companies to EPA as part of the national inventory preparation process, and also as part of the formal public notice and comment process of the proposed oil and gas new source performance standards for VOCs. EPA is currently reviewing these data.

8. Does EPA have any plans to revisit its 2010 methane emissions estimates? Please describe those plans.

As noted in #7, EPA recently received additional data from URS Corporation as part of the national inventory preparation process and also as part of the formal public notice and comment process of the proposed oil and gas new source performance standards (NSPS) for VOCs. EPA plans to carefully evaluate this and all other additional relevant information provided to us during the NSPS public comment period. This information will first be evaluated against the data and

assumptions used in the impacts analysis to the proposed rule to determine if any updates should be made to the final rule analysis as a result of this information. Subsequently, all relevant updates will then be incorporated, as applicable, in the next cycle of the U.S. GHG Inventory.

9. Has EPA considered reverting to the estimation methodologies used prior to 2010 for future estimates?

No. EPA carefully reviewed the original gas well completion emission factor used in the U.S. Inventory prior to making the update to the 9,175 Mcf per completion. As discussed in our response to question 2 above, the original emission factor for gas well completions from the 1996 EPA/GRI study no longer represents the diversity of gas production practices in use today, and the emission rates associated with these practices.

10. Which proposed or potential EPA regulations will be based, in whole or in part, on the 2010 EPA estimates of methane emissions from natural gas development?

These and other data informed the analysis supporting the proposed New Source Performance Standards, which would reduce harmful air pollution (VOCs and Hazardous Air Pollutants) from the oil and natural gas industry while allowing continued, responsible growth in U.S. oil and natural gas production. More information on this proposed rule, including the Regulatory Impact Analysis is available at http://www.epa.gov/airquality/oilandgas. Additionally, these data were used to inform development of Subpart W of the GHG Reporting Rule.

11. Does EPA disagree with the findings of the URS Corporation study of methane emissions from natural gas well completions? In light of the major discrepancy between the EPA and URS estimates, will EPA reconsider revisiting its methane emissions estimates?

EPA received the findings of the URS Corporation recently. We plan to carefully evaluate the URS Corporation study and all other additional relevant information provided during the NSPS public comment period on this emissions estimate. This information will first be evaluated against the data and assumptions used in the impacts analysis to the proposed rule to determine if any updates should be made to the final rule analysis as a result of this information. Subsequently, all relevant updates will then be incorporated, as applicable, in the next cycle of the GHG Inventory.

12. Please provide all documents referring or relating to EPA's calculation of the 2011 estimate of methane emissions during natural gas development.

More detailed information on the development of this factor can be found in the following documents:

- The Technical Support Document to Subpart W of Part 98, Greenhouse Gas Reporting Rule (http://www.epa.gov/climatechange/emissions/downloads10/Subpart-W_TSD.pdf).
- The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 (April 2011), starting on page 3-43 (http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Chapter-3-Energy.pdfl)

- Annex 3: Methodological Descriptions for Additional Source or Sink Categories, starting on page A-147 (http://www.epa.gov/climatechange/emissions/downloads11/US-GHG-Inventory-2011-Annex-3.pdf)
- The Technical Note published with the 2011 inventory that provides further details on the complete list of improvements made (http://www.epa.gov/methane/downloads/TechNote_Natural%20gas_4-15-11.pdf)

Attachment 1

Data for Unconventional Completions and Workovers in 2009.
For 1990-2009 GHG inventory

Activity Factors		
Well Count	(Wells)	50,434
Well Completions	(Completions/year)	4,169
Well Workovers	(workovers/year)	5,043
Emission Factors and Adjustments		
Well Completions	(scf/completion)	9,175,000
Well Workovers	(scf/workover)	9,175,000
Regional methane content	(percent)	Ranges from 78.4% to 91.9%
*Emissions**		
Well Completions	(MMscf)	30,962.21
Well Workovers	(MMscf)	37,184.52
TOTAL UNCONTROLLED	**(MMscf)**	**68,146.73**
Voluntary Reductions	**(MMscf)**	24,235
Regulation Reductions		
Well Completions	(MMscf)	15,659
Well Workovers	(MMscf)	18,805
Regulation Subtotal	(MMscf)	34,464
NET EMISSIONS	**(MMscf)**	**9,448**

* The emissions are calculated on a regional basis by multiplying the number of well completions and workovers in each region by the appropriate emission factor above, and adjusting for methane content of the natural gas in that region. These regional methane emissions estimates are then summed to a national number, presented in the table as "Total Uncontrolled."

AL-11-002-0857

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Chairman Issa:

I am writing in response to your letter of November 18, 2011, regarding the Environmental Protection Agency's (EPA) regulations of greenhouse gas emissions from light-, medium-, and heavy-duty vehicles. The enclosure provides detailed responses to your questions. In addition, EPA staff has been in discussions with your staff with regard to your requests for documents, and we are working to respond to those requests.

Thank you again for your letter. Please feel free to contact me if you have any questions, or your staff may contact Tom Dickerson on my staff at (202) 564-3638.

Sincerely,

Arvin Ganesan
Associate Administrator

Cc: The Honorable Elijah Cummings
Ranking Member

Enclosure

ENCLOSURE

December 16, 2011

1. **The Chairman asked for a list of all EPA employees who were involved in the development of the rules. EPA provided only three names. Does EPA have a list of everyone who was involved? Please provide this list to the committee. In addition to EPA officials, the Committee requests a list of all White House, OMB, CEQ, and CARB officials who participated in the development of the rules to the extents feasible.**

Response:

The development of the 2017-2025 light-duty vehicle greenhouse gas proposal was led by the EPA's Office of Air and Radiation (OAR). In addition to the three names previously provided, the following are names of additional OAR and Office of General Counsel employees who made important contributions to the development of the September 2010 Joint Notice of Intent, the December 2010 Supplemental Joint Notice of Intent, the August 2011 Supplemental Joint Notice of Intent, and the November 2011 Joint Notice of Proposed Rulemaking.

Office of Air and Radiation

Alson, Jeff
Caffrey, Cheryl
Cardamone, Kate
Charmley, Bill
Cherry, Jeff
Davidson, Ken
Ellies, Ben
French, Roberts
Froman, Sarah
Ganss, David
Harris, Hugh
Helfand, Gloria
Kahan, Ari
Lee, Byungho
Lie, Sharon
Lieske, Christopher
McDonald, Joseph
Moran, Robin
Nam, Edward
Neam, Anthony
Nelson, Brian
Newberg, Cindy
Sarofin, Marcus
Shelby, Mike
Sherwood, Todd
Wysor, Tad
Zawacki , Margaret

Office of General Counsel

Hannon, John
Silverman, Steven

In May of 2010, President Obama issued a presidential memorandum calling on the EPA and NHTSA to work together, building on the joint rulemaking for model years (MY) 2012-2016 cars and light trucks, to develop greenhouse gas emission and fuel economy standards for new cars and light trucks for MY 2017-2025. The memorandum calls upon the agencies to develop, through notice and comment rulemaking, a coordinated national program, which "should seek to produce joint Federal standards that are harmonized with applicable State standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet." Consistent with these goals, various personnel from components in the Executive Office of the President played an important role in facilitating coordination between the two federal agencies involved, as well as in helping to convene discussions with stakeholders engaged in the rulemaking process, including the California Air Resources Board (CARB).

In keeping with this role, representatives from the Council on Environmental Quality, OMB's Office of Information and Regulatory Affairs (OIRA), the Domestic Policy Council, and the National Economic Council were involved in discussions relating to the development of these regulations. OIRA and some of these other offices were also involved in the interagency review process for the proposed rule for MY 2017-2025, which was issued last month.

It is our understanding that CARB has provided the Committee with a list of CARB officials who participated.

5. EPA's response provided a generic description of EPA's interaction with CARB. The Committee is interested in knowing the details of CARB's involvement in the rulemaking. Accordingly please respond to the following questions.

- **a. Which meeting did CARB participate in?**
- **b. How many meetings did CARB attend in total?**
- **c. Who else was present at those meetings?**
- **d. What was CARB's role in these meetings?**
- **e. Did CARB have a "vote" in these discussions?**
- **f. Did CARB ever threaten to walk away from the discussions? If so, what were the consequences of this threat?**
- **g. How did CARB's involvement in the process in the negotiations shape the final product?**
- h. **Did CARB's views take priority over the views of other stakeholders involved in the negotiations**?

Response:

We have attached a list of all of the meetings which we have identified to date which the EPA participated in for which one or more representatives of CARB also participated, from May 22, 2010, through July 29, 2011. We are continuing to search our records, and to the extent we identify additional meetings not listed in the Attachment we will forward that information to the Committee.

As previously described in our November 1, 2011, response, the EPA has worked with CARB as contemplated by the Presidential memorandum regarding greenhouse gas emissions standards issued on May 21, 2010. The memorandum states, among other things, that the EPA and NHTSA should work together to develop a national program that "should seek to produce joint Federal standards that are harmonized with applicable State standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet." With regard to the meetings CARB attended, CARB participated and provided valuable technical insight and feedback to the EPA in these meetings and throughout the development of the proposed rule.

CARB did not have a "vote" during these discussions nor, to the EPA's knowledge, did CARB ever threaten to walk away from the discussions. CARB's participation in these meetings helped ensure that the National Program for MY 2017–2025 light-duty vehicles will be harmonized with any applicable state standards and that all manufacturers can build a single fleet of U.S. vehicles that would satisfy all requirements under both the EPA and NHTSA's programs as well as under California's program, helping to reduce costs and regulatory complexity while providing significant energy security and environmental benefits.

7. The Committee seeks the total amount of funds expended by EPA in setting fuel economy/GHG emissions standards since 2007 by year. EPA's response provided the amount of funds allocated, reprogrammed, or requested. EPA will provide the committee with the total amount of funds expended by year since 2007.

Response:

The EPA fully expended the funding identified earlier as allocated, reprogrammed, or requested. These funds were part of the overall funds allocated to the EPA's Federal Vehicles and Fuels Standards and Certification program. Funding appropriated by Congress to this program are two-year funds, meaning they are available for expenditure over a two year period. Based on historical utilization rates for this program, the EPA estimates that 90% of the funding allocated for setting GHG emission standards was expended in the first year of availability, and the remaining 10% was expended in the second year of availability.

14. According to publicly available documents, automakers and trade groups were required to agree that they would not challenge any final rule for both the MY 2012-2016 standards and the MY 2017-2025 standards.

a. Why were these companies required to agree to not challenge the regulations?
b. Why were these companies required to not challenge the decision to grant the California Waiver?
c. What benefit did the automakers receive in exchange for relinquishing these rights?

d. Who mandated that the automakers agree to this condition?
e. Was this a decision of the White House, EPA, or NHTSA?

Response:

In the EPA's letter of November 1, 2011, the EPA responded to a similar question by stating that:

> EPA engaged with a large and diverse group of stakeholders (including, but not limited to, original equipment manufacturers, suppliers, labor organizations, consumer organizations, environmental groups and members of the United States Congress) to obtain data and information relevant to the setting of light-duty vehicle GHG emission standards in accordance with the CAA. No one was required to surrender any legal rights as a precondition for engaging in discussions with EPA.
>
> EPA is working with NHTSA to complete the joint NPRM addressing the setting of greenhouse gas standards and CAFE standards for MYs 2017-2025 by mid-November 2011, and that rulemaking will comply with all applicable statutory and regulatory requirements, including the Administrative Procedure Act (APA). EPA will take comments received in response to the NPRM, as well as any additional relevant information that becomes available to EPA prior to the issuance of a final rule, into account in developing the final GHG standards for MYs 2017-2025.

As we stated then, no company was required to surrender any legal right as a precondition for engaging in discussions with the EPA. The letters of support from the many companies do not relinquish legal rights; rather, they express the signatories' intentions. They provide clear statements of the support for the national program outlined in the Supplemental Notice of Intent, as well as conditions on or caveats with respect to such support. By virtue of these statements, all of the signatories have the benefit of clearly understanding the position and intention of all of the other signatories. Similar commitment letters helped to facilitate a successful process with regard to the MY 2012-2016 standards. The EPA is unaware of anyone "mandating" that any of the signatories sign these letters.

17. The August 2011 Supplemental Notice of Intent proposes minimal-to-no fuel economy increases for the largest light-duty trucks for MY 2017-2021. See 76 Fed. Reg. 48,758 (Aug 9, 2011). Specially, in Chart A.2 on page 48,768, the fuel economy targets for light trucks during MY 2017-2021 converge around the 68 square foot mark. See id at 48,768. Thus, this chart indicates that trucks larger than 68 square feet – i.e. large light-duty trucks – will not be required to increase fuel economy in each of those five model years. No other type of vehicle was similarly exempted from fuel economy increase. EPA's initial response indicates that its "technical judgment is that these vehicles have attributes which warrant a lower rate of increase in stringency... include[ing] payload and towing capabilities." Please provide all documents relating to EPA's decision to not require improved performance for this class of vehicles.

Additionally, the Automotive News reported that Ron Bloom "gave automakers a break for light trucks and acquiesced to the Detroit 3 request for a break on big pickups." Neil Roland, How Obama's Compromise Make a New CAFE a Smaller Leap, Automotive News, Aug. 8, 2010. Is this true? What was Ron Bloom's role in developing the GHG/fuel economy standards? Please list any meetings regarding GHG/fuel economy standards that Ron Bloom or his staff participated in. What role did he play in the discussions? Did his participation influence the final product of the rule?

Response:

The EPA has not proposed fuel economy standards; the EPA has proposed greenhouse gas standards, including standards for CO_2. This question implies that the proposed CO_2 targets for larger trucks (those above 68 square feet) do not increase in stringency each model year. This implication is incorrect. For the proposed CO_2 standards, there is no model year in which the proposed target for any specific footprint value does not increase in stringency compared to the previous model year. The figures identified in question 17 are specific to the fuel economy standards under consideration by NHTSA. The proposed CO_2 standards for trucks for model years 2017-2025 are shown graphically in Figure I-4 of the December 1, 2011 notice of proposed rulemaking (See 76 FR 74874). As can be seen in that figure, the CO_2 target for trucks with a footprint value of 68 square feet do increase in stringency each year from 2017-2021. Specifically, the targets for each of these model years is 347.2 g/mi CO_2 in 2017, 341.7 g/mi CO_2 in 2018, 338.6 g/mi CO_2 in 2019, 335.3 g/mi CO_2 in 2020, and 311.1 g/mi CO_2 in 2021.

Nevertheless, the EPA recognizes that proposed standards for MY 2017-2025 will be challenging for large trucks that are often used for commercial purposes and have generally higher payload and towing capabilities and higher cargo volumes than other light-duty vehicles. Because of this, for these vehicles, the EPA is proposing a lower annual rate of CO_2 improvement, which averages 3.5 percent in the early years (MY 2017-2021) of the program, and a higher annual rate of 5 percent in the later years (MY 2022-2025) of the program.

In developing this proposal for light-duty trucks, the EPA considered a range of technical concerns and policy trade-offs which are discussed in detail in the recently published proposal for MY 2017-2025 cars and trucks.[1] As required under section 202(a) of the Clean Air Act, the EPA considered the appropriate lead-time and engineering redesign cycles for each manufacturer to implement the emissions reduction technology across its product line taking into account the effectiveness and costs of the technology.

The feasibility analysis conducted by the EPA relied upon independently published research, results from the agencies' research programs including the Technical Assessment Report (TAR)[2] released in September 2010, and results of the EPA's assessment modeling.[3] In addition to these major analyses, the EPA along with NHTSA and CARB met on a number of occasions with

[1] See Preamble section II.C. and III.D; and draft Joint Technical Support Document Chapter 2.

[2] See Interim Joint Technical Assessment Report: Light Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards for Model Years 2017-2025 (September 2010) found at: http://www.epa.gov/otaq/climate/regulations/ldv-ghg-tar.pdf;

[3] See Preamble II.C. and III.D; EPA draft RIA Chapter 3; draft Joint Technical Support Document Chapter 2.

original equipment manufacturers (OEMs) to understand specific manufacturer issues and concerns given product lines and to solicit additional data relevant to how the standards should be set. Many OEMs shared confidential business information with the agencies during these meetings. A summary of concerns raised by OEMs in these meetings is found in the joint proposal preamble, section I.A.4.

Collectively, the analyses undertaken by the EPA support the proposed MY 2017-2025 CO_2 emissions standards and the proposed light-duty truck curves. As requested, we are providing copies of the proposal preamble, the draft Joint Technical Support document, and the EPA draft Regulatory Impacts Analysis document. A detailed discussion of this technical analysis related to the stringency of the proposed truck curves can be found in the Section II.C and III.D of the joint preamble, the EPA draft Regulatory Impact Analysis document in Chapters 3 and the draft Joint Technical Support Document Chapter 2.

As discussed in the response to question 1 above, the White House played an important role in facilitating coordination between the two federal agencies involved in this rulemaking, as well as in helping to convene discussions with stakeholders engaged in the rulemaking process, including CARB. Ron Bloom was, at the time, the President's advisor on manufacturing policy and had substantial knowledge about the auto manufacturing sector. To the EPA's knowledge, Mr. Bloom contributed to the White House's coordinating and convening role, including by helping to facilitate some of the discussions among the EPA, NHTSA, and CARB, and among these agencies and automotive companies and other non-governmental stakeholders.

20. The Supplemental Notice of Intent sets specific targets for fuel economy/GHG standards. The Committee is concerned that the Administration has predetermined the results of the rulemaking. To assist the Committee in understanding the practical mechanisms of the rulemaking, please answer the following questions:

a. Does EPA have flexibility to modify the final rule based on feedback received during the comment phase?

b. Will EPA take into serious consideration all public comments received in response to the NPRM?

c. Will EPA provide substantive responses for each unique comment received?

d. Is it possible that the final fuel economy standard for 2025 will be more than or less than 54.5 miles per gallon?

e. To the extent that the Administration has expended enormous time and capital in negotiating the standards with several interested parties, how will a change in rule between the NOI and the final rule affect the Administration's coalition?

f. Why did the Administration choose not invoke the negotiated rulemaking process in developing these standards?

Response:

The EPA has the ability to modify the proposed rule based on feedback received during the public rulemaking. The EPA will give serious consideration to all of the public comments received in the response to the proposed rule. The EPA expects to receive a significant body of

informative and helpful comments in this rulemaking, as it has in many prior rulemakings. This is likely to lead to a variety of changes between the proposed and final rule. The extent of such changes will of course depend on the nature and quality of the comments received, including those on the levels of the standards for the various categories of vehicles and model years.[4] However, the EPA fully expects that the public comment process and further interaction with the wide variety of stakeholders will be fruitful and will lead to the most appropriate final rule. Consistent with our general practice, the EPA will respond to all significant comments, and, as appropriate, will respond to several identical or similar comments together.

The EPA does not have adequate knowledge to answer the question with regard to how different stakeholders may respond to hypothetical changes to the proposed rule. As noted above, the EPA expects to receive substantial and informative comments on the proposed rule and anticipates that these comments are likely to lead to changes between the proposed rule and the final rule. The Agency expects to continue to interact with stakeholders during the rulemaking process and hopes to foster broad stakeholder and public support for the final rule to the extent possible, consistent with our statutory responsibilities and the record before us.

The process under the Negotiated Rulemaking Act of 1990 involves creation of a negotiated rulemaking committee subject to FACA requirements. This Act allows, but does not require, agencies to employ this committee process. Although the EPA has utilized this process under at least one past Clean Air Act rulemaking in the mobile source area, this example is an exception to the Agency's general use of traditional notice and comment rulemaking.

Consistent with Executive Order 13563, the proposal for the MY 2017-2025 standards was developed with early consultation with stakeholders, employs flexible regulatory approaches to reduce burdens, maintains freedom of choice for the public, and helps to harmonize federal and state regulations. The process used to develop the framework described in the July 2011 Supplemental Notice of Intent (SNOI) followed upon the successful experience in developing the framework described in the May 2009 Notice of Upcoming Joint Rulemaking for the MY 2012-2016 standards. Based on this experience, the EPA followed a similar process in developing the July 2011 SNOI.

[4] As noted above, the EPA is not setting a fuel economy standard; EPA proposed and intends to adopt emissions standards for greenhouse gases.

AL-11-002-0857

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 0 9 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The enclosed responses and documents supplement our December 16, 2011, response to your letter of November 18, 2011, in which you requested information and documents regarding the Environmental Protection Agency's regulations of greenhouse gas emissions from light-, medium- and heavy-duty vehicles.

We have had extensive discussions with your staff with regard to the scope of your request and how best to sequence the EPA's response. Consistent with those discussions, we are providing this initial set of responses at this time and will continue to work to provide further responsive information as expeditiously as practicable.

- In response to item 2.a of your November 18 request, as agreed with your staff, the EPA is providing narrative descriptions of the technical meetings and communications between the EPA and CARB and between the EPA and auto manufacturers for the relevant rulemakings (Enclosure 1). As agreed with your staff, the EPA is collecting and reviewing other potentially responsive documents and will produce additional documents as expeditiously as possible.

- In response to item 2.c, the EPA is providing the documents it has identified as responsive to your request dating from January 1, 2009 to the present. In addition, some of the documents provided in connection with item 2.d (discussed below) also contain material responsive to item 2.c. The EPA has conducted a search and is not aware of other documents responsive to item 2.c for this time period, with the exception of multiple subsequent drafts of the final waiver grant; those subsequent drafts do not include any substantive edits to the relevant text being provided in response to item 2.c.

- In response to item 2.d, as agreed with your staff, the EPA is providing a timeline of the decision process leading to the EPA's decision to grant the State of California a waiver under Section 209(b) of the Clean Air Act for its model year 2009 and later greenhouse gas emission standards for motor vehicles (Enclosure 2), together with briefing documents associated with key milestones in that timeline.

- In response to item 2.i, as agreed with your staff, the EPA is providing a timeline of the development of aggregate cost estimates for the now-proposed 2017-2025 greenhouse gas emissions standards for light-duty vehicles (Enclosure 3), together with briefing documents associated with key milestones in that timeline.

The EPA continues to work diligently to respond to other pending elements of your request, and has devoted considerable resources to that end. We will continue to work with your staff on the process and timing for further production of responsive documents.

Please note that the EPA has identified an important Executive Branch confidentiality interest in the enclosed documents because they reflect internal deliberations, attorney-client communications, and/or attorney work product. We recognize the importance of the Committee's oversight functions, but we remain concerned about any further disclosure of this information for a number of reasons. First, because the documents reveal deliberative process information internal to the Agency, the EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis were to be disclosed in a broad setting. The inability of policy makers to obtain a broad range of advice and recommendations from staff would have a negative effect on the Agency's overall deliberative process and ultimately would impair the Agency's ability to properly execute its programs. Second, further disclosure could result in misunderstanding or misrepresentation of the purposes and rationale for the relevant EPA actions. The enclosed documents are pre-decisional and may not reflect the Agency's full and complete thinking on the relevant matters, which are provided in the final, public documents setting forth the relevant agency actions. Third, further disclosure could adversely affect the litigation position of the United States in future litigation related to the matters and issues in question.

In order to identify the documents in which the EPA has a confidentiality interest, we have added a watermark to these documents that reads "Internal Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress for Oversight Purposes." Through this accommodation, the EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. The EPA respectfully requests the Committee and staff protect the documents and the information contained in them from further dissemination. Should the Committee determine that its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with the Agency to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible. You will also note that a small number of the documents contain redactions of material that is not responsive to your request.

Please contact me if you have further questions regarding this letter, or your staff may contact Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638.

Sincerely,

Arvin Ganesan
Associate Administrator

Enclosures

cc: The Honorable Elijah Cummings
Ranking Member

Enclosure 1 – Item 2.a

This enclosure describes the technical communications that occurred between May 2010 and mid-June 2011 between the EPA and various auto manufacturers, and separate technical communications between the EPA and the California Air Resources Board (CARB). It does not include a discussion of the communications between the EPA and automotive firms and between the EPA and CARB from mid-June 2011 through the end of July 2011, during which time the EPA was engaged in the intensive dialogue with stakeholders that led to the August 2011 Joint Supplemental Notice of Intent. Consistent with our discussions with Committee staff, the Agency is in the process of searching our records for responsive documents regarding question 2.a from the Committee's November 18, 2011 request for communications between the EPA and automotive firms and between EPA and CARB during that time period.

Communications between the EPA and Auto Companies May 2010 to mid-June 2011

This enclosure describes the general nature of the technical communications between the EPA and auto manufacturers between May 2010 and June 2011 regarding the development of the proposed greenhouse gas standards for model years 2017 to 2025 light duty vehicles. In addition to representatives from the EPA, in general, representatives from the National Highway Traffic Safety Administration (NHTSA) and the California Air Resources Board (CARB) participated in the technical communications (e.g., email, document exchanges, and meetings). In almost all cases, the government agencies communicated with individual auto companies rather than with groups of auto companies.

In general, the material exchanged between individual automotive companies and the EPA was in the form of technical power point presentations provided by an auto company to the EPA, or, in some cases, spreadsheets containing data from an auto company. This information was generally provided during face-to-face meetings or during conference or video meetings with individual auto companies or via email. The majority of this technical information was provided from the auto companies to the EPA. The vast majority of all of the information provided by individual auto companies has been claimed by the firms to be confidential business information. Not including the various spreadsheets of data provided by auto companies (including the confidential company product plans discussed below), in total the EPA received more than 60 documents from individual auto companies totaling more than 1,600 pages.

Communications with Auto Companies between May 2010 and September 2010

Following the issuance of the Presidential Memorandum Regarding Fuel Efficiency Standards on May 21, 2010, the EPA, CARB and NHTSA began technical work which led to the publication of the September 2010 Draft Interim Technical Assessment Report (TAR). As part of the data gathering for that assessment, the three agencies met with more than ten auto companies (individually) in order to understand each manufacturer's current and future technologies and

product offerings, as well as the technologies' potential for reducing greenhouse gas emissions and increasing fuel economy.

Examples of these meetings can be seen in the December 16, 2011 EPA submission to the Committee that detailed the meetings the EPA participated in that also included CARB. These include the meetings held on June 10, 2010; June 11, 2010; June 14, 2010; June 15, 2010; June 24, 2010; June 25, 2010; July 7, 2010; July 8, 2010; and July 15, 2010.

During these technical meetings and exchanges with individual automotive companies, the EPA received detailed technical information regarding each auto company's current and future vehicle and technology plans. In many cases, this included estimates of future penetration levels of technologies capable of reducing greenhouse gas emissions, such as improved gasoline and diesel engines, improved transmissions, mass reduction technology, air conditioning system improvement technology, hybrid vehicles, plug-in hybrid electric vehicles, all electric vehicles, and fuel cell vehicles. The information from auto companies often included specific estimates on technology readiness, future technology penetration rates, technology effectiveness for reducing greenhouse gas emissions, and technology costs. Many companies also provided information regarding the need for and potential barriers to the establishment of a charging infrastructure for electric vehicles (including infrastructure at home, the work place, or in public locations). Some automotive companies also provided estimates to the EPA regarding what potential future level of stringency they believed their company could meet, and what the company's estimated costs and/or technology penetration would be for a given level of stringency.

In general, the material exchanged between individual automotive companies and the EPA were in the form of technical power point presentations provided by an auto company to the EPA, or, in some cases, spreadsheets containing data from an auto company. This information was generally provided during face-to-face meetings or during conference or video meetings with individual auto companies or via email. The vast majority of all of the information provided by individual auto companies has been claimed by the firms to be confidential business information. Communications also included email exchanges with individual auto companies, covering topics such as meetings or information requests, or technical follow-up to specific topics.

Many individual auto companies also provided information regarding potential key program design elements for a future 2017-2025 program, including input on emissions averaging, banking and trading of credits, off-cycle credit provisions, air conditioning credit provisions, the treatment of upstream emissions due to the generation of electricity, and the potential need for and design of a mid-term technology review of the future standards. Some companies also provided input regarding the potential impact of future standards on the competitiveness of the automotive industry and the impact of future standards on automotive industry employment.

Communications with Auto Companies between October 2010 and November 2010

Following the publication of the Interim Joint Technical Assessment (TAR) report, the EPA, NHTSA and CARB met during October through November 2010 with a large number of individual automotive companies in order to hear directly from each firm its technical review of and feedback on the Joint TAR and the Joint Notice of Intent. Examples of these meetings can be seen in the December 16, 2011 EPA submission to the Committee that detailed the meetings EPA participated in that also included CARB. These include the meetings held on October 18, 2010; October 19, 2010; October 20, 2010; October 25, 2010; October 26, 2010; October 27, 2010; October 29, 2010; and November 1, 2010.

In general, the material exchanged between individual automotive companies and the EPA were in the form of technical power point presentations provided by an auto company to the EPA, or, in some cases, spreadsheets containing data from an auto company. This information was generally provided during face-to-face meetings or during conference or video meetings with individual auto companies or via email. The vast majority of all of the information provided by individual auto companies has been claimed by the firms to be confidential business information.

In addition, several automotive companies and automotive trade groups submitted written comments to the public dockets in response to the September TAR and Joint NOI. A high-level summary of the input received from the automotive firms is contained in the December 2010 Supplemental Joint Notice of Intent.

Communications with Auto Companies between December 2010 and mid-June 2011

From December 2010 into mid-June 2011, the EPA had many additional communications with individual automotive companies, as well as, in a few cases, with automotive trade groups and their member companies. Many, though not all, of these communications included representatives from NHTSA and/or CARB. In general, the material exchanged between individual automotive companies and the EPA was in the form of technical power point presentations provided by an auto company to the EPA, or, in some cases, spreadsheets containing data from an auto company. This information was generally provided during face-to-face meetings or during conference or video meetings with individual auto companies or via email. The vast majority of all of the information provided by individual auto companies has been claimed by the firms to be confidential business information.

These communications with individual automotive firms covered a wide range of technical topics, including the topics discussed above under the May 2010 to September 2010 communications summary. This included communications providing additional input and review from automotive firms regarding the inputs and assessment contained in the September 2010 TAR. Meetings with individual auto firms also included on-going technical input from the each company regarding its future product and technology development plans. In addition, the EPA also received input from individual automotive firms regarding a range of potential 2017-

2025 program elements and designs topics, including input on the potential shape of footprint-attribute standard curves, the relative stringency between the passenger car fleet and the truck fleet, and additional input regarding a potential mid-term review of the future standards. Many individual companies also provided information and recommendations regarding potential program incentives such as potential multipliers for advanced technology vehicles like plug-in hybrid electric vehicles and all electric vehicles. Examples of these technical meetings can be seen in the December 16, 2011 EPA submission to the Committee that detailed the meetings EPA participated in that also included CARB. These include meetings held on March 17, 2011; March 25, 2011; April 1, 2011; April 19, 2011; April 27, 2011; May 2, 2011; May 3, 2011; May 12, 2011; May 23, 2011; May 24, 2011; June 1, 2011; June 8, 2011; and June 15, 2011.

In addition, the EPA met on a number of occasions with the two major automotive trade associations (the Alliance of Automobile Manufacturers and the Global Automakers), which included representatives from a number of the member companies. These meetings focused on the topic of the potential mid-term review, which the EPA and NHTSA had discussed in the September 2010 Notice of Intent (NOI) and the December 2010 Supplemental NOI. Information in the form of written documents and power points were exchanged during these meetings. In addition, the automotive trade groups also provided to the EPA, CARB, and NHTSA several technical assessment reports regarding several of the topics discussed in the September 2010 TAR and the September 2010 NOI and December 2010 Supplemental NOI.

In addition to the communications with automotive companies discussed above, in December 2010, NHTSA issued a Federal Register Notice Request for Comments titled "Passenger Car and Light Truck Average Fuel Economy Standards Request for Product Plan Information – Model Years 2010 – 2025" for automotive company product plans. During February through March 2011, a number of automotive companies responded to this request on an individual basis, and provided the same information submission to the EPA as they provided to NHTSA. These documents included written responses to specific questions contained in the Request for Comment as well as detailed spreadsheets regarding the technical information requested in the Request for Comment on current and future vehicle models, as well as engine and transmissions. The auto companies generally claimed that these product plan submissions were confidential business information.

Communications between the EPA and the California Air Resources Board (CARB) between May 2010 and mid-June 2011

In response to the May 21, 2010 Presidential Memorandum, the EPA (and NHTSA) worked with representatives from CARB on the assessment that resulted in the Joint Interim Technical Assessment Report (TAR), published in September 2010. As described above, representatives from CARB participated in a large number of meetings and stakeholder interactions with EPA and NHTSA regarding the development of the underlying technical information used to inform the 2017-2025 proposal. In addition to communications with automotive companies,

representatives from CARB also participated in meetings between the EPA and automotive suppliers, electrical infrastructure stakeholders, state air quality agencies, environmental organizations, labor unions, consumer advocacy groups, other stakeholder groups, and contractors for the EPA and/or CARB, in order to collect information from a wide range of stakeholders regarding the technical and other information regarding potential future GHG standards for light-duty vehicles. These meetings are reflected in the December 16, 2011 submission to the Committee regarding meetings involving the EPA and CARB.

In addition to the stakeholders listed above, the EPA also met a number of times with CARB and representatives from the U.S. Department of Energy (DOE) to discuss information on several technical areas on which DOE has expertise, including electric vehicle infrastructure, vehicle mass reduction, and lithium-ion battery cost estimation. These meetings are reflected in the December 16, 2011 submission to the Committee regarding meetings involving the EPA and CARB.

A very large number of technical meetings and exchanges also occurred that only involved representatives from the EPA, CARB, and NHTSA, or, in some cases, only the EPA and CARB. The technical exchanges included but were not limited to email communications, spreadsheets, technical reports, contractor reports, power point presentations, and modeling assessments. These meetings have been listed in a previous submission to the Committee. In order to perform the analysis that lead to the Joint Interim TAR, representatives from the EPA, CARB, and NHTSA met on many occasions and exchanged information to plan and discuss the range of technical information and assessment which was undertaken for the TAR. These meetings are reflected in the December 16, 2011 submission to the Committee regarding meetings involving the EPA and CARB.

These communications often involved detailed information on specific technical topics, such as the costs and/or effectiveness for each of a very large number of technologies. This process was then repeated following the publication of the TAR and the December 2010 Supplemental Joint Notice of Intent, primarily during the months of January 2011 through May 2011. During this time period, there were a very large number of technical meetings and exchanges among the EPA, NHTSA and CARB, during which the three agencies' staff discussed in detail the many technical inputs that would be needed to perform the technical analysis for both the joint EPA and NHTSA NPRM and the CARB Initial Statement of Reasons for potential future GHG and CAFE standards for 2017-2025. In addition to the many meetings and exchanges among the EPA, CARB, and NHTSA technical staff, the three agencies' mid-level and senior management held many planning, coordination, and status update meetings and exchanged documents to ensure the overall project proceeded on schedule and to discuss and resolve issues as needed. These meetings are reflected in the December 16, 2011 submission to the Committee regarding meetings involving the EPA and CARB.

Enclosure 2 – Item 2.d

Summary of Timeline Relating to the EPA's Consideration of the California Air Resources Board's (CARB's) Request for Reconsideration of the denial of its Clean Air Act, Section 209, Waiver Request for its Light Duty Vehicle Greenhouse Gas Emission (GHG) Standards
(documents enclosed for items in bold italic text)

March 6, 2008: Federal Register publication of the EPA's initial denial of CARB's waiver request for model year 2009 and later greenhouse gas (GHG) emission standards for motor vehicles.

January 21, 2009: CARB submitted request to the EPA for reconsideration of the prior waiver denial for its model year 2009 and later motor vehicle GHG standards (Request for Reconsideration).

January 26, 2009: President Obama issued Memorandum for the Administrator of EPA regarding "State of California Request for Waiver Under 42 U.S.C. 7543(b), the Clean Air Act"

- Requested an assessment as to whether EPA's decision to deny a waiver based on California's application was appropriate in light of the Clean Air Act.
- Requested, based on that assessment, that EPA initiate any appropriate action.

January 27, 2009: ***Briefing for Lisa Heinzerling, Senior Climate Policy Counsel to Administrator Lisa Jackson, regarding CARB's Request for Reconsideration***[1]

- Provided the basis and legal status of prior Administrator Johnson's waiver denial, an overview of the Clean Air Act criteria for waiver consideration, and issues associated with waiver reconsideration.

February 6, 2009: Administrator Jackson signed Notice announcing initiation of reconsideration of its prior denial of CARB's model year 2009 and later motor vehicle GHG waiver request.

February 12, 2009: Federal Register publication of the EPA's of notice announcing initiation of reconsideration of CARB's model year 2009 and later motor vehicle GHG waiver request. 74 Fed. Reg. 7040.

March 5, 2009: The EPA's Public Hearing on CARB's Request for Reconsideration.

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[1] Lisa Heinzerling served as Senior Climate Policy Counsel to Administrator Jackson from January to July of 2009, after which she served as the EPA's Associate Administrator for the Office of Policy. During most of this period, the EPA did not yet have a Senate-confirmed Assistant Administrator for the Office of Air and Radiation. Gina McCarthy was confirmed for that position on June 2, 2009.

March 11, 2009: Omnibus Appropriations Act, 2009 signed into law. Section 424 of Division E provides: "Not later than June 30, 2009, the Administrator of the Environmental Protection Agency shall reconsider, and confirm or reverse, the decision to deny the request of the State of California to regulate greenhouse gas emissions from new motor vehicles."

April 6, 2009: Written comment period closed on CARB's Request for Reconsideration.

April 28, 2009: ***Briefing for the Office of Transportation and Air Quality (OTAQ) Director Margo Oge Regarding CARB's Request for Reconsideration.***

- Provided an overview of the comments received during the public hearing and written comment period, along with staff analysis.

May 15, 2009: ***Briefing for Lisa Heinzerling regarding CARB's Request for Reconsideration.***

- Provided an overview of the comments received during the public hearing and written comment period, along with staff analysis.

May 20, 2009: ***Briefing for Lisa Heinzerling regarding CARB's Request for Reconsideration.***

- A continuation of the May 15, 2009 briefing.

June 4, 2009: ***Briefing for Administrator Jackson regarding CARB's Request for Reconsideration.***

- Provided an overview of the comments received during the public hearing and written comment period, along with staff analysis.

June 15, 2009: ***Briefing Assistant Administrator for the Office of Air and Radiation Gina McCarthy regarding CARB's Request for Reconsideration.***

- Provided an overview of the comments received during the public hearing and written comment period, along with staff analysis.

June 30, 2009: Administrator Jackson signs the EPA's waiver of preemption under CAA Section 209 for CARB's model year 2009 and later motor vehicle GHG standards.

July 8, 2009: Federal Register publication of the EPA's waiver of preemption under CAA Section 209 for CARB's model year 2009 and later motor vehicle GHG standards. 74 Fed. Reg. 32744.

Enclosure 3 – Item 2.i

Summary of Timeline Relating to EPA's Development of Aggregate Cost Estimates in Connection with Proposed Model Year 2017-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards

Attached are eleven EPA briefings regarding evolving estimates of the potential aggregate costs produced in connection with the development of a proposed light duty vehicle greenhouse gas emissions program for model years 2017-2025. The proposed program was developed over a significant period, culminating in the issuance, in November 2011, of a proposed rule on which the EPA currently has conducted public hearings and is taking written comment. The briefings are listed at the end of this narrative description. As explained below, these briefings correspond to key stages in the development, and communication to agency decision makers, of estimates of potential costs for the proposed program.

These briefings contain information regarding estimated potential costs of potential future standards at either a per-manufacturer level, or at an industry-wide level. In order to develop cost estimates at these aggregated levels, EPA technical staff began by estimating costs and greenhouse gas effectiveness for individual technologies, such as for a specific type of vehicle transmission, or a specific engine technology. Cost estimates for individual technologies are described in several assessment documents developed by EPA and NHTSA over the past few years, including the Final Joint Technical Support Document for the 2012-2016 joint rulemaking, the Interim Joint Technical Assessment Report (also co-authored by the California Air Resources Board), and the Draft Joint Technical Support Document for the 2017-2025 Joint Notice of Proposed Rulemaking.

Following issuance of the Presidential Memorandum to EPA and DOT in May of 2010, EPA, NHTSA and CARB technical staff began meeting on a routine basis in order to perform the technical work needed to develop the Draft Interim Joint Technical Assessment Report (TAR) which was published in September 2010. The first two of the briefings (#1 and #2) included with this submission present the EPA staff's cost estimates that were used to brief EPA, CARB, and NHTSA management on the status of the cost estimates being developed by the three agencies' technical staffs for the TAR. The development of the TAR included extensive dialogue between and data collection by EPA, CARB, and NHTSA, and included many meetings between the three agencies, as well as individual meetings with a range of stakeholders, including auto manufacturers and suppliers. Examples of these meetings can be seen in the December 16, 2011, EPA submission to the Committee which lists those meetings that included representatives from CARB. The December 16, 2011, submission lists more than 80 meetings which occurred among the three agencies or with external stakeholders.

At the publication of the TAR and the accompanying Joint Notice of Intent (NOI), the EPA and NHTSA requested public comment on those documents. In addition to written comments from a range of stakeholders, the EPA, CARB and NHTSA met with a number of stakeholders, almost always on an individual basis, in order to hear their input on the TAR and NOI. The information received by the agencies on the TAR and NOI during October – November 2010 was summarized in the December 2010 Supplemental Joint NOI. Examples of the stakeholder meetings can be seen in the December 16, 2011, EPA submission to the Committee which identified meetings in which the EPA participated that also included CARB. These include meetings held on October 18, 2010; October 19, 2010; October 20, 2010; October 25, 2010; October 26, 2010; October 27, 2010; October 28, 2010; and October 29, 2010.

Following the Supplemental Joint NOI, the EPA, CARB and NHTSA continued to meet with a range of stakeholders, both to receive additional input and review of the TAR and NOI as well as to gather additional technical information to be considered in the development of the EPA and NHTSA Joint Notice of Proposed Rulemaking (NPRM). In addition, as discussed in the September TAR and NOI, and the December 2010 Supplemental NOI, the EPA and CARB had on-going technical contracts regarding the cost, feasibility, and effectiveness of several advanced vehicle technologies, which provided data for consideration for the NPRM.

From December 2010 to May 2011 the EPA, NHTSA and CARB technical staff gathered, reviewed and analyzed a very large amount of technical information which was necessary for the technical underpinnings of the analysis for the EPA and NHTSA NPRM. As discussed above, this included meetings with external contractors providing technical input to the agencies on technology costs and feasibility. Examples of these meetings involving external contractors can be seen in the December 16, 2011 EPA submission to the Committee which detailed the meetings EPA participated in that also included CARB. These include the meetings on December 16, 2010; January 13, 2011; February 16, 2011; April 7, 2011, and May 5, 2011.

This time was also spent by the technical staff considering and discussing the available information – including the review and analysis by the EPA, CARB, and NHTSA technical staff of a broad range of technical information. This information was considered and discussed by the three agencies' staffs at a series of technical meetings in this time frame. Examples of these technical meetings can be seen in the December 16, 2011 EPA submission to the Committee which detailed the meetings EPA participated in that also included CARB. These include the meetings held on January 20, 2011; February 3, 2011; February 9, 2011; February 10, 2011; February 14, 2011; March 3, 2011; March 7, 2011; March 9, 2011; March 10, 2011; March 20, 2011; March 24, 2011; and March 25, 2011.

EPA staff and management, often with representatives from NHTSA and CARB, also met with a number of automotive industry technology suppliers individually in this time frame to gather addition information on specific technologies cost and feasibility. Examples of these technical meetings can be seen in the December 16, 2011 EPA submission to the Committee which

detailed the meetings the EPA participated in that also included CARB. These include the meetings held on January 24, 2011; January 26, 2011; January 31, 2011; and February 3, 2011.

The EPA staff and management, often with representatives from NHTSA and CARB, also met one-on-one with a number of automotive companies in this time frame to gather addition information on a range of topics, including information on specific technologies cost and feasibility. Examples of these technical meetings can be seen in the December 16, 2011 EPA submission to the Committee which detailed the meetings EPA participated in that also included CARB. These include the meetings held on March 25, 2011; April 27, 2011; May 2, 2011; May 3, 2011; and May 12, 2011.

Much of the work performed by the EPA staff during this period of time can be seen in the Draft Joint Technical Support Document (Draft TSD) published as part of the 2017-2025 Joint Notice of Proposed Rulemaking. That document, nearly 500 pages long, contains much of the underlying technical information which enabled the EPA (and NHTSA) to perform the cost and other impacts assessment presented in the Joint NPRM for the 2017-2025 proposed standards. The Draft TSD does not present a cost assessment of any particular standard – rather, it contains many of the inputs developed by EPA and NHTSA in order to perform an assessment of the costs and other impacts of potential standards. The draft TSD includes information on the cost, CO2 effectiveness, production readiness, implementation rates and other information on a very large number of vehicle technologies. In addition, the EPA technical staff, working in many cases with NHTSA and/or CARB technical staff, also developed the necessary technical information to enable the EPA to model potential ranges of stringency for future standards, including but not limited to information on the future price of gasoline fuel, diesel fuel, and electricity; projections of the population and distribution of the future light-duty vehicle fleet, and other technical data to support our assessment for the EPA and NHTSA NPRM. It was not until the May 2011 time frame that the EPA technical staff was able to assemble this detailed range of technical information and allow the EPA staff to perform modeling projections of a range of potential future stringencies and the costs of those various levels of stringency, such that the EPA staff was in a position to perform updated cost assessments, improving upon the modeling projections performed for the September 2010 Interim Joint Technical Assessment Report.

The briefing documents identified below as #3-7 and included with this submission show a range of cost projections from the results of the EPA technical staff's cost estimates (and other information) which resulted from the technical collaboration with the NHTSA and CARB technical staff up through approximately May 2011.

The briefing documents identified as # 8, 9, and 10 and included with this submission correspond to briefings for two senior managers, Margo Oge and for Gina McCarthy, respectively (#8 and 9), and for the EPA Administrator (#10). These briefings were provided after the publication of

the August 2011 Supplemental Joint Notice of Intent. These briefings reflect a number of updates to the EPA's cost estimates which occurred during July through August of 2011.

The briefing document identified as #11 and included with this submission corresponds to a briefing for the EPA Administrator which occurred shortly before the release of the Joint NPRM for the 2017-2025 proposed standards.

1. July 26, 2010 – EPA briefing for Margo Oge (EPA), Ron Medford (NHTSA), and Tom Cackette (CARB) regarding the development of the Draft Joint Interim Technical Assessment Report (TAR) and initial cost estimates for the TAR

2. July 30, 2010 – EPA briefing for Gina McCarthy (EPA) regarding the development of the Draft Joint Interim Technical Assessment Report (TAR) and initial cost estimates for the TAR

3. June 2, 2011 – EPA briefing for Margo Oge (EPA) regarding draft potential cost estimates for the 2017-2025 GHG proposal.

4. June 7, 2011 – EPA briefing for Gina McCarthy (EPA) regarding draft potential cost estimates for the 2017-2025 GHG proposal.

5. June 7, 2011 – EPA briefing for Margo Oge (EPA), Ron Medford (NHTSA), and Tom Cackette (CARB) regarding draft potential cost estimates for the 2017-2025 GHG proposal.

6. June 10, 2011 – EPA briefing for representatives from the Executive Office of the President, including the Domestic Policy Council, the National Economic Council, the Office of Management and Budget and the Council on Environmental Quality, regarding draft potential cost estimates for the 2017-2025 GHG proposal.

7. June 14, 2011 – EPA briefing for representatives from the Executive Office of the President, including the Domestic Policy Council, the National Economic Council, the Office of Management and Budget and the Council on Environmental Quality, regarding draft potential cost estimates for the 2017-2025 GHG proposal.

8. September 2011 – EPA briefing for Margo Oge, Director of the Office of Transportation and Air Quality, in preparation for a briefing for EPA Administrator Jackson regarding the draft proposed 2017-2025 GHG standards, including draft cost estimate information.[1]

[1] The briefings identified as #s 8 and 9 used a draft briefing document for Administrator Jackson to brief Ms. Oge and Ms. McCarthy. These briefing papers indicate the briefing date for the

9. September 2011 – an EPA briefing for Gina McCarthy, Director of the Office of Air and Radiation, in preparation for a briefing for EPA Administrator Jackson regarding the draft proposed 2017-2025 GHG standards, including draft cost estimate information.

10. September 12, 2011 – an EPA briefing for EPA Administrator Jackson regarding the draft proposed 2017-2025 GHG standards, including draft cost estimate information.

11. November 14, 2011 – an EPA briefing for EPA Administrator Jackson regarding the proposed 2017-2025 GHG standards, including cost estimates.

Administrator as September 14, 2011, but the EPA's understanding is that the briefing date was changed and actually occurred (as indicated on the briefing paper in #10) on September 12.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 2 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This is in further response to your letters of September 30 and November 18, 2011, in which you requested detailed information and numerous documents regarding the Environmental Protection Agency's regulations of greenhouse gas emissions from light-, medium- and heavy-duty vehicles.

We have had extensive discussions with your staff with regard to the scope of your request and how best to sequence the EPA's response. In letters dated October 11, November 1, and December 16, 2011, the EPA provided information and detailed responses to the questions you asked in your letters. And, on February 9, 2012, we provided additional information as well as numerous documents responsive to your request.

At this time, consistent with the discussions we have had with your staff, we are providing, on the enclosed CD, an additional set of documents. These documents are responsive to item 2.a of your request of November 18, 2011, and consist of communications between EPA personnel and auto manufacturers and between EPA personnel and California Air Resources Board (CARB) personnel, that refer or relate to the development of the proposed 2017-2025 standards for light duty vehicles, during the period from the beginning of June 2011 to the President's announcement, on July 29, 2011, of the 2017-2025 program for vehicle emission and fuel economy standards. As EPA staff has discussed with your staff, the EPA continues to process a number of additional documents falling into this same category.

Please note that the EPA has identified confidentiality interests in a small number of the enclosed documents because they include material reflecting agency deliberations. We recognize the importance of the Committee's oversight functions, but we remain concerned about further disclosure of this information for a number of reasons. First, because these documents reveal deliberative information of the Agency, the EPA is concerned about the chilling effect that would occur if Agency employees believed their frank and honest opinions and analysis were to be disclosed in a broad setting. In addition, further disclosure could result in misunderstanding or misrepresentation of the purposes and rationale for the relevant EPA actions. These documents

are pre-decisional and may not reflect the Agency's full and complete thinking on the relevant matters, which are provided in the final, public documents setting forth the relevant agency actions.

In order to identify the documents in which the EPA has a confidentiality interest, we have added a watermark to these documents that reads "Deliberative Document of the U.S. Environmental Protection Agency; Disclosure Authorized Only to Congress for Oversight Purposes." Through this accommodation, the EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. The EPA respectfully requests the Committee and staff protect the documents and the information contained in them from further dissemination. Should the Committee determine that its legislative mandate requires further distribution of this information outside the Committee, we request that such need first be discussed with the Agency to help ensure the EPA's confidentiality interests are protected to the fullest extent possible. You will also note that a small number of the documents contain redactions of non-substantive material, such as conference codes or personal email addresses.

The EPA continues to work diligently to respond to other pending elements of your request, and has devoted considerable resources to that end. We will continue to work with your staff on the process and timing for further production of responsive documents.

If you have further questions regarding this letter, please contact me or have your staff call Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Arvin Ganesan
Associate Administrator

Enclosure

cc: The Honorable Elijah Cummings
Ranking Member

AC-11-001-5042

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 2 2 2011

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Issa:

Thank you for your questions of September 7, 2011 regarding Acting Assistant Administrator Nancy Stoner's testimony at the July 14, 2011 hearing before the Subcommittee on regulatory Affairs, Stimulus Oversight and Government Spending of the Committee on Oversight and Government Reform. The U.S. Environmental Protection Agency appreciates the opportunity to respond to your questions. Please find enclosed Ms. Stoner's responses.

Again, thank you for your questions. If you have further questions, please contact me or your staff may call Denis Borum of my staff at (202) 564-4836.

Sincerely,

Arvin Ganesan
Associate Administrator

cc: The Honorable Dennis J. Kucinich, Ranking Minority Member,
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

Enclosure

Questions for the Record from the July 14, 2011 Hearing
Committee on Oversight and Government Reform
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

Questions for Ms. Nancy Stoner
Acting Assistant Administrator for Water
United States Environmental Protection Agency
from Rep. Dennis Kucinich, Ranking Minority Member

Question 1. At the hearing on July 18[1], the majority introduced a September 30, 2009, letter from Robert D. Peterson, District Engineer for the United States Army Corps of Engineers (the Corps) to the Acting Regional Administrator of EPA regarding EPA's request to review the Mingo Logan Coal Company's Section 404 Clean Water Act permit for discharges of mine waste into surrounding waters from Spruce No. 1 Mine. In the letter, the Army Corps stated that they did not believe there was new information that merited reviewing its decision on the Spruce No. 1 Mine permit. What new information did EPA have that compelled the Agency to pursue its 404c action?

Response: The letter sent by U.S. Army Corps of Engineers (COE) District Engineer Colonel Robert D. Peterson on September 30, 2009 was sent in response to a September 3, 2009 letter (see attached) sent by EPA Acting Regional Administrator William C. Early to Colonel Peterson expressing EPA's belief that reevaluation of the circumstances and conditions of the Spruce No. 1 Mine permit would be in the public interest. In that letter, EPA cited research and data pertaining to the downstream degradation of water quality and the project's potential cumulative impacts within the Coal River Watershed that EPA believed were directly relevant to determining whether the project was consistent with the Clean Water Act. The letter written by Acting RA Early lists 20 peer-reviewed articles, scientific reports, and datasets in support of the EPA's request. That said, the Corps' September 30, 2009 letter did conclude that there were no factors that compelled the District Engineer to suspend, modify, or revoke the permit.

As a result of the EPA's continued concerns regarding the environmental impacts of the Spruce No. 1 Mine, and in light of these data, the EPA believed that the project warranted further investigation pursuant to Clean Water Act Section 404(c). The EPA's Section 404(c) analysis included a careful review of additional data and information, including peer-reviewed scientific studies of the ecoregion, that had become available since permit issuance. The peer-reviewed literature now reflects a growing consensus of the importance of headwater streams, that is: a growing concern about the adverse ecological effects of mountaintop mining, specifically with regard to the effects of elevated levels of total dissolved solids and selenium discharged by mining operations on downstream aquatic ecosystems; and a concern that impacted streams cannot be easily recreated or replaced. These scientific advances provided evidence that the EPA's long-standing concerns about the Spruce No. 1 project were well-founded. The EPA's

[1] Question number one incorrectly indicates a hearing date of July 18, 2011, whereas the cover letter page has the correct date of July 14, 2011. EPA has repeated the questions here verbatim.

Final Determination relies upon a body of science that was not fully developed in 2006. Since 2006, the scientific understanding of the types of effects that will occur as a result of construction of the Spruce No. 1 Mine as authorized has significantly increased and informed the EPA's action. Notably, Appendix 7 of the EPA's Final Determination on the Spruce No. 1 Mine includes more than 100 references that were not available at the time of permit issuance.

The EPA also included a detailed response to the conclusions contained in the Corps' September 30, 2009 letter as part of Appendix 6 of the Final Determination. This response is available at http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/spruce.cfm (see response #11A).

Question 2. The same letter also stated that the West Virginia Department of Environmental Protection "advised the District that Spruce No. 2 Mine is currently in compliance with their existing authorizations for the mine." Please clarify the basis of the EPA's Final Determination in light of the lack of violations identified in the Corps' letter. Please explain whether the subject of the Final Determination was future mining planned for a new location, and whether the basis for the Final Determination concerned environmental consequences of that future mining, rather than operations already in existence. Please also explain if the Final Determination under 404(c) actually stopped any currently ongoing mining activity.

Response: The EPA's Final Determination concluded that unacceptable adverse effects to wildlife would occur as a result of discharges that had been authorized but had not yet occurred to two streams and their tributaries on the project site, Pigeonroost Branch and Oldhouse Branch. This conclusion was based on two types of unacceptable adverse effects:

- *Direct Effects:* The EPA concluded that the project would bury 6.6 miles of some of the last remaining high quality streams and riparian areas within the Coal River watershed. These streams contain important wildlife communities and habitat and they rank very high in comparison to other streams in West Virginia and in Central Appalachia. Including their riparian areas, the streams within the Spruce No. 1 Mine area provide important habitat for over 40 species of amphibians and reptiles, four species of crayfish, and five species of fish, as well as numerous birds, bats, and other mammals. The EPA concluded that the filling of these streams in connection with the Spruce No. 1 Mine would have eliminated the entire suite of important physical, chemical and biological functions provided by these streams and would have resulted in the loss of salamander, fish, and other wildlife populations that depend on that habitat for survival.
- *Downstream Effects:* The EPA concluded that the filling of Pigeonroost Branch, Oldhouse Branch, and their tributaries would have also resulted in unacceptable adverse effects on wildlife by increasing levels of pollution to downstream waters, where over 25 different species of fish are found. Full construction of the Spruce No. 1 Mine would bury streams on site beneath tons of excess overburden material that would leach pollutants, particularly total dissolved solids and selenium, into downstream waters and adversely impact the wildlife communities that live in or utilize these streams. EPA concluded that the predicted loss of food sources caused by these increased pollution levels, as well as additional exposure to selenium would have caused adverse effects to

fish species found in Spruce Fork as well as amphibians, reptiles, crayfish, and bird species that depend on downstream waters for food or habitat.

A third stream, Seng Camp Creek, has been used for the placement of excess overburden material since mine operations began in 2007 under an agreement between the mining company and environmental groups that had filed a legal challenge to the project. West Virginia DEP's reference to an absence of violations refers to the ongoing mining activities within the Seng Camp Creek watershed. The EPA's Final Determination and supporting analyses did not withdraw specification of Seng Camp Creek as a disposal site and, therefore, did not stop ongoing mining activities in that watershed. The EPA, however, did consider data, such as discharge monitoring reports derived from Mingo Logan's ongoing mining activities in the Seng Camp Creek watershed as evidence of the types of likely impacts associated with similar discharges, were they to occur in the adjacent Pigeonroost Branch and Oldhouse Branch watersheds. For example, discharge monitoring reports from the Seng Camp Creek watershed confirmed that mining activities in the Spruce No. 1 mine were likely to disturb selenium-bearing strata. Because the NPDES permit did not include limits for selenium at the outfalls in question, there was no permit violation. Nevertheless, the information regarding selenium levels is relevant to the EPA's Final Determination.

The basis for the EPA's decision, as noted above, was that discharges associated with the Spruce No. 1 Mine would result in unacceptable adverse effects to wildlife. The Clean Water Act does not require the EPA to determine that violations of applicable state authorizations, such as NPDES permits, SMCRA permits, and state water quality standards, have occurred in order to take action pursuant to Section 404(c) of the Clean Water Act. The EPA made clear in the Final Determination, and its responses to comments, that the EPA's finding of unacceptable adverse effects does not depend upon a finding of violation of state or federal water quality standards.

The action does not affect mining activities that have already commenced in the Seng Camp Creek Watershed, which may continue. The permit withdrawal affects only proposed future mining-related discharges into Pigeonroost Branch and Oldhouse Branch, which have not yet occurred. Mining activities outside the Seng Camp Creek watershed may be conducted pursuant to appropriate Federal or State authorization as long as they do not involve a disposal of dredged or fill material to the Pigeonroost Branch, Oldhouse Branch, or their tributaries. Any such future activities that relied exclusively on upload disposal sites and did not mine through or otherwise involve a discharge to waters of the US would not be affected by EPA's Final Determination.

Question 3. The letter also stated that EPA incorrectly identified the location of Seng Camp as an impaired water. Please provide a written explanation clarifying this statement and explain what effect, if any, this had on EPA's 404(c) action.

Response: Acting Regional Administrator Early's September 3, 2009 letter to Colonel Peterson indicated that Seng Camp Creek was listed on West Virginia's 2008 Clean Water Act Section 303(d) list of impaired streams. West Virginia DEP was correct that this impairment was a result of elevated levels of iron and not as a result of impaired biology.

Within footnote 14 in the EPA's September 24, 2010 Recommended Determination on the Spruce No. 1 Mine, the EPA made a typographical error, referring to "Seng Creek" as "Seng Camp Creek." This footnote summarizes the results of a West Virginia DEP study on selenium and fish tissue and highlights the water column and fish tissue selenium concentrations measured in two creeks not on the Spruce No. 1 site, Beech Creek and Seng Creek. These data were cited as support for the EPA's concerns that discharges associated with the Spruce No.1 Mine would be likely to lead to elevated levels of selenium in water and therefore to harmful levels of selenium in fish tissue. It is clear from the context of footnote 14 that the reference EPA intended was to Seng Creek, not Seng Camp Creek. This error was corrected in the Final Determination.

The impairment status of Seng Camp Creek was not part of the basis for the EPA's final determination.

AC-11-002-0013

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 2 3 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

Thank you for your letter of November 21, 2011, to U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the EPA's recent proposal to collect certain information from concentrated animal feeding operations (CAFOs). I am pleased to respond on behalf of the Agency and am enclosing detailed responses to your questions.

Your letter expresses concerns about the EPA decision making regarding the proposed CAFO information collection rule and related litigation. The EPA is committed to conducting its litigation activities (including settlement negotiations) and administering its programs in accordance with the highest legal and ethical standards and in the public interest. As detailed in the enclosed responses, the EPA's actions in connection with the CAFO rulemaking are fully consistent with that commitment.

As explained in greater detail in the enclosure, the recent CAFO proposal is consistent with the EPA's authorities under the Clean Water Act and would support programs to improve water quality in a sound and reasonable manner. CAFOs represent a significant source of pollutants, such as nitrogen, phosphorus, and pathogens, which when discharged into nearby water bodies can harm public health and the environment. The proposed rule would call for the collection of basic information that would support efforts to improve regulatory and permitting programs for CAFOs. Ultimately, more complete and accurate information will assist governments, regulated communities, interest groups and the public in making more informed decisions regarding how best to protect water quality.

This rulemaking is still in the proposal stage, and the EPA has not committed to any final substantive outcome. The Agency published the notice of proposed rulemaking on October 21, 2011, and has requested comment on two proposed options as well as alternative approaches to achieve its water-quality related objectives. The Agency will closely review and respond to stakeholders' views on the proposal in the coming months as it begins its final decision-making process.

Thank you for your interest in this important subject matter. If you have further questions, please contact me or have your staff contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Arvin Ganesan
Associate Administrator

Enclosures

Cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Responses to Questions in the November 21, 2011 Letter

1. Provide a full and complete explanation of EPA's decision to enter into, and subsequently finalize, settlement negotiations with NRDC in National Pork Producers v. U.S. Environmental Protection Agency. Provide all documents and communications referring or relating to EPA's decision-making process to settle with NRDC in National Pork Producers v. U.S. Environmental Protection Agency.

In November 2008, the EPA promulgated a rule revising the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) regulations applicable to CAFOs in response to the decision in *Waterkeeper Alliance, et al v. EPA*, 399 F.3d 486 (2d Cir. 2005). 73 Fed. Reg. 70,418 (Nov. 20, 2008). Environmental and agricultural groups filed court challenges to the 2008 rule, which were consolidated in the U.S. Court of Appeals for the Fifth Circuit. In an effort to settle the litigation, the EPA reached out to all parties. The EPA met with agricultural petitioners to explore possible settlement. Unfortunately, the EPA and agricultural petitioners were unable to reach an agreement that would serve as the basis for a settlement. The EPA did reach settlement with the environmental petitioners (the Natural Resources Defense Council, Waterkeeper, and the Sierra Club). As explained below, the EPA's settlement with the environmental petitioners in this matter was reasonable and served the public interest.

The settlement agreement the EPA reached committed the EPA to take two actions: (1) to publish a guidance document to assist permitting authorities in implementing the 2008 rule, specifically by explaining which CAFOs were now required to obtain permit coverage; and (2) to propose a rule that would require CAFOs to provide certain information to the EPA pursuant to CWA section 308, or explain in the proposal why the EPA was not proposing that information be submitted, and to take final action on the proposed rule by May 25, 2012. The settlement agreement does not commit the EPA to the substance of any final action on the rulemaking. It states that nothing in the agreement shall be construed to limit or modify the discretion accorded to the EPA by the CWA or by general principles of administrative law.

The EPA decided to enter into the settlement agreement for several reasons. First, even if the EPA cannot settle claims with all parties, it is in the EPA's interest to reduce the issues to be addressed in litigation. Second, in deciding to pursue settlement, the EPA conducted a careful assessment of the risks and potential ramifications for the Agency and affected stakeholders of an adverse decision. If the EPA had lost on the claims articulated by environmental petitioners and the court had remanded the issues to the EPA, the Agency could have been required to evaluate potential establishment of more stringent regulatory requirements and to undertake further rulemaking in this area.

In addition to the litigation advantages of settling, the actions the EPA agreed to take in the settlement agreement serve the public interest. The EPA committed to issue guidance that would assist CAFO owners/operators and states implementing the program to determine whether a CAFO is subject to the EPA's permit requirements under the 2008 rule. This guidance was designed to provide clarity to producers and the public.

Finally, the EPA viewed a potential information collection rule as useful to more effectively implement the CWA and the 2008 CAFO rule. Despite more than 35 years of regulating CAFOs, reports of water quality impacts from large animal feeding operations persist. In the context of a 2003 rulemaking related to CAFOs, the U.S. Department of Agriculture provided the EPA with estimates indicating that livestock operations where animals are confined produce more than 300 million tons of manure annually. 68 Fed. Reg. 7180. On the basis of that figure, the EPA estimated that animals raised in confinement generate more than three times the amount of raw waste than the amount of waste generated by humans in the Unites States and that CAFOs collectively produce 60 percent of all manure generated by farms that confine animals. *Id.*

Pollutants from manure, litter, and process wastewater can adversely affect human health and the environment. Whether from poultry, cattle, or swine, manure, litter and process wastewater contains substantial amounts of nutrients (nitrogen, phosphorus, and potassium), pathogens, heavy metals, and smaller amounts of other elements and pharmaceuticals. This manure, litter, and process wastewater commonly is applied to crops associated with CAFO operations or transferred off site. Where over-applied or applied before precipitation events, excess nutrients can flow off of agricultural fields into nearby water bodies, causing harmful aquatic plant growth, commonly referred to as "algal blooms," which can cause fish kills and contribute to "dead zones." In addition, algal blooms often release toxins that are harmful to human health.

In September 2008, the United States Government Accountability Office (GAO) issued a report to congressional requesters, recommending that the EPA "should complete the Agency's effort to develop a national inventory of permitted CAFOs and incorporate appropriate internal controls to ensure the quality of the data." GAO, Concentrated Animal Feeding Operations – EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality, GAO-08-944 5 (2008), 48. EPA officials stated that "EPA does not have data on the number and location of CAFOs nationwide and the amount of discharges from these operations. Without this information and data on how pollutant concentrations vary by type of operation, it is difficult to estimate the actual discharges occurring and to assess the extent to which CAFOs may be contributing to water pollution." *Id.* at 31. The report also stated that "despite its long-term regulation of CAFOs, . . . EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act." *Id.* at 48. The EPA responded to the draft GAO report by stating that the Agency would develop a comprehensive national inventory of CAFOs. *Id.* at 76.

The information the EPA proposed to collect pursuant to the first option in its proposed rulemaking would enable the EPA, states, and others to determine the number of CAFOs in the United States and their locations. Under a second proposed option, the Agency would collect this information only for CAFOs in focus watersheds where there are greater water quality concerns associated with CAFOs. Water quality impacts from CAFOs may be due, in part, to inadequate compliance with existing regulations or to limitations in CAFO permitting programs. The EPA believes that basic information about CAFOs would assist the Agency in addressing those problems. Complete and accurate information allows governments, regulated communities, interest groups and the public to make more informed decisions regarding ways to protect the environment.

If the Committee desires further information in connection with this subject, EPA staff will work with your staff to accommodate any such interest.

2. Provide a full and complete explanation of EPA's decision to hire Nancy Stoner as Deputy Assistant Administrator for Water in February 2009, including whether EPA was aware or concerned about any potential conflicts of interest surrounding Stoner's hiring. Provide all documents and communications referring or relating to EPA's consideration, evaluation, and determination of Nancy Stoner's apparent conflict of interest, including any authorization of Stoner's work on the settlement agreement with the environmental petitioners.

Nancy Stoner serves in a non-career Senior Executive Service (SES) position at the EPA. These types of positions exist pursuant to the Civil Service Reform Act of 1978, Pub. L. 95-454, 92 Stat. 111, and 5 C.F.R. 214.401(a). Non-career or other general SES appointments are not subject to competitive staffing requirements, but Agency heads must certify that the appointee meets qualifications required for the position. In addition, both the White House Office of Presidential Personnel and the Office of Personnel Management must approve each non-career appointment prior to the Agency's making the appointment.

Ms. Stoner began her non-career service on February 1, 2010, as the Deputy Assistant Administrator for Water. Since February 13, 2011, she has served as acting Assistant Administrator for Water. In January 2010, the EPA Ethics Office received notification that Ms. Stoner was under consideration for a position at the EPA, and consequently began discussions with her about potential conflicts and recusals. Because she would be a non-career SES candidate, the EPA Ethics Office reviewed Ms. Stoner's public financial disclosure report and informed her that she would be subject to Executive Order 13490, and therefore required to sign the President's ethics pledge. Prior to her appointment, the EPA Ethics Office reviewed and certified Ms. Stoner's financial disclosure report and also drafted a screening arrangement to ensure she avoided any conflicts or impartiality issues. On February 4, 2010, the EPA Ethics Office met with Ms. Stoner to provide her with initial ethics training on these and other issues, as required by 5 C.F.R. 2638.703. Because of her position, Ms. Stoner is also required by 5 C.F.R. 2638.704 to take an ethics training course in each successive year, and has met this training requirement as well.

As evidenced by her signed screening arrangement, Ms. Stoner agreed not to participate in any particular matter involving her former employer, the Natural Resources Defense Council (NRDC), as a specific party under the federal impartiality regulations until February 1, 2011. In addition, consistent with the President's ethics pledge, she agreed for an additional year, until February 1, 2012, not to participate in any particular matter involving specific parties in which NRDC is a party or represents a party.

Consistent with her screening arrangement, Ms. Stoner was not involved in any decision-making related to the settlement of claims related to the 2008 CAFO rule. In fact, most of the Agency's negotiations took place prior to her joining the EPA in February 2010. As early as October 2009, the EPA and the environmental petitioners filed a joint motion with the Fifth Circuit Court

of Appeals to extend the briefing schedule to allow the parties to continue settlement discussions. The court granted that motion. During her time at the EPA, Ms. Stoner has not been involved in any discussions related to the settlement with the environmental petitioners.

Under Executive Order 13,490 and federal ethics regulations, Ms. Stoner was precluded from participating in any specific party matter that involved her former employer, NRDC. In recognition of these restrictions, she properly recused herself from participation in any litigation or other matter in which NRDC was a party or represented a party. As part of the settlement agreement, the EPA agreed to propose and take final action on the CAFO information collection rulemaking. Generally speaking, however, rulemaking is not a "specific party matter" but rather a matter of general applicability. Since the CAFO information collection rulemaking is indeed a matter of general applicability, EPA ethics officials determined that Ms. Stoner could participate in it without violating her ethics pledge or her ethics obligations.

3. Provide a full and complete explanation of Nancy Stoner's involvement in EPA's decision-making process leading up to its settlement agreement in National Pork Producers v. U.S. Environmental Protection Agency.

a. **What role did Nancy Stoner, as EPA Deputy Assistant Administrator for Water, play in EPA's settlement negotiations with NRDC?**
b. **What interaction did EPA have with Nancy Stoner when she served as co-director of NRDC's Water Program?**
c. **Did Nancy Stoner alert EPA officials – including, but not limited to, Administrator Lisa Jackson, Assistant Administrator for Water Peter Silva, General Counsel Scott Fulton, and Senior Counsel for Ethics Justina Fugh – about her apparent conflict of interest?**
d. **If Nancy Stoner alerted EPA officials, what steps did EPA take to mitigate the appearance of a conflict of interest?**
e. **If Nancy Stoner did not alert EPA officials, when did EPA become aware of the apparent conflict of interest?**
f. **At the time Nancy Stoner rejoined EPA, was EPA aware of Nancy Stoner's apparent conflict of interest stemming from her employment by NRDC? If no, please provide an explanation.**
g. **Did EPA take any steps to notify the court, the other litigants, or industry stakeholders about Nancy Stoner's apparent conflict of interest? If no, please provide an explanation.**
h. **Did EPA institute a firewall, screen, or similar sequestration mechanism around Nancy Stoner as a result of her apparent conflict of interest? If no, please provide an explanation.**
i. **Did Nancy Stoner receive authorization from EPA to participate in the settlement negotiations with NRDC? If yes, explain who gave the authorization and provide documents sufficient to support your answer.**

Please see the response to Question 2.

4. Identify all EPA officials who were involved with or consulted in the settlement negotiations with NRDC in National Pork Producers v. U.S. Environmental Protection Agency, and provide their names and titles.

The following EPA officials contributed to the Agency's decision-making in settlement negotiations in *National Pork Producers v. EPA*:

Name	Title
Linda Boornazian	(Former) Director, Water Permits Division
Randy Hill	Deputy Director, Office of Wastewater Management
Jim Hanlon	Director, Office of Wastewater Management
Peter Silva	(Former) Assistant Administrator, Office of Water
Steven Neugeboren	Associate General Counsel, Office of General Counsel
Avi Garbow	Deputy General Counsel, Office of General Counsel
Scott Fulton	General Counsel, Office of General Counsel

5. Identify all EPA officials who ultimately approved the settlement agreement with NRDC in National Pork Producers v. U.S. Environmental Protection Agency, and provide their names and titles. Provide all decisional memoranda and coordination sheets referring or relating to EPA's action.

The following EPA officials approved the settlement agreement. If the Committee desires further information on this subject, EPA staff will work with your staff to accommodate any such interest.

Name	Title
Peter Silva	(Former) Assistant Administrator, Office of Water
Scott Fulton	General Counsel, Office of General Counsel

6. Identify all EPA officials, employees, or contractors who were involved or consulted in drafting the recently proposed CAFO regulation, and provide their names and titles.

The Office of Water (OW) was the lead program office in developing the EPA's proposed CAFO regulation published on October 21, 2011. The following officials in OW and the Office of General Counsel played a significant role in the development of the proposed rule:

Name	Title
Deborah Nagle	Director, Water Permits Division
Linda Boornazian	(Former) Director, Water Permits Division
Randy Hill	Deputy Director, Office of Wastewater Management
Jim Hanlon	Director, Office of Wastewater Management
Ellen Gilinsky	Senior Policy Advisor, Office of Water
Peter Silva	(Former) Assistant Administrator, Office of Water

Nancy Stoner	Acting (formerly Deputy) Assistant Administrator, Office of Water
Steven Neugeboren	Associate General Counsel, Office of General Counsel
Avi Garbow	Deputy General Counsel, Office of General Counsel

7. Identify all EPA officials who ultimately approved the recently proposed CAFO regulation, and provide their names and titles. Provide all decisional memoranda and coordination sheets referring or relating to EPA's action.

The officials identified in the response to question 6 each had a role in approving the proposed rule. If the Committee desires further information on this subject, EPA staff will work with your staff to accommodate any such interest.

8. Part of EPA's stated purpose in proposing the information-gathering regulation is to "improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. However, "if EPA's [NPDES] authority is limited to the regulation of CAFOs that discharge," as EPA acknowledges in the proposed rulemaking, for what purpose is EPA seeking information from CAFOs that do not discharge and over which EPA has no NPDES authority?

The EPA proposes to gather information from CAFOs pursuant to its authority in CWA section 308 to collect information. 33 U.S.C §1318(a). Section 308 authorizes information collection from "point sources," which includes CAFOs that discharge or may discharge. See 33 U.S.C. §1362(14) (the term "point source" is defined as "any discernible, confined, and discrete conveyance, including . . . any . . . concentrated animal feeding operation . . . from which pollutants are or may be discharged . . ."). The plain language of section 308 authorizes information collection to carry out the objectives of the Act, specifically including assisting in developing, implementing, and enforcing effluent limitations or standards, such as the prohibition against discharging without a permit. 33 U.S.C. 1318(a).

The EPA and authorized states need site-specific information regarding CAFOs that are subject to NPDES regulations to provide well-informed NPDES program direction (including issuance of regulations, policy and guidance documents), to provide oversight and enforcement of the NPDES program for CAFOs, to inform Congress and the public about environmental and human health impacts of CAFOs, and to better ensure protection of public health and the environment. The information the EPA proposes to collect is limited to basic information about CAFOs and would, in the case of the first proposed option, enable the EPA, states, and others to determine the number of CAFOs in the United States and where they are located. Under a second proposed option, the Agency would collect this information only for CAFOs in focus watersheds where there are greater water quality concerns associated with CAFOs. Under either option, this information would assist the EPA in developing, implementing, and enforcing the requirements of the Act. For further discussion of the importance of this rulemaking, please see the response to Question 1.

9. The proposed rule estimates that compliance with the regulation would collectively cost CAFOs $200,000 in additional administrative expenses. Please describe in detail how EPA

arrived at this figure and provide documentation sufficient to support your response. Is EPA concerned that this proposed rule may overly burden CAFOs, especially CAFOs that do not discharge, or small -to-medium CAFOs that are operating within their margins?

The EPA described burden and costs of the proposed rule in the Impact Analysis chapter of the preamble to its October 21, 2011 proposed rule. The proposed rule would not alter existing NPDES technical requirements for CAFOs, and therefore the cost impacts to CAFOs from the rulemaking are limited to the information collection burden it would impose. The EPA estimated this burden as part of the assessment of the administrative burden impacts that the Agency is required to complete under the Paperwork Reduction Act (PRA). The EPA submitted this analysis for review by the Office of Management and Budget (OMB) as stipulated in the PRA. We have enclosed a copy of this analysis along with our response to your letter.

As a starting point for estimating the reporting burden faced by CAFOs under the proposed rule, the EPA examined its PRA analyses as approved by OMB for the 2003 and 2008 CAFO rules. For these analyses, EPA had already accounted for the time CAFOs would require to document any nutrient management practices pursuant to these rules. These analyses had also estimated that those CAFOs applying for NPDES permit coverage under these rules would incur a nine-hour administrative burden to complete and file NPDES permit applications or notices of intent to be covered by a general NPDES permit. Any facilities that would be required to provide information related to land application in response to the proposed reporting rule are already assumed to have this information on file pursuant to the documentation requirements in the 2003 and 2008 rules. Moreover, permit applications require significantly more information than what the EPA is proposing to collect as part of the proposed rule. Therefore, the EPA estimated that a CAFO would need one hour to gather and submit the information on the proposed survey form to the EPA as indicated in the proposed rulemaking.

The EPA then combined the estimates of numbers of CAFOs that would be required to respond to the information collection request in the proposed rule with the estimates of the reporting burden under the proposed rule. The EPA thus projected that CAFO operators would collectively experience an increase in total annual administrative burden of approximately $200,000 on a national basis, or $29.30 per facility, as further described in our response to question 10 below.

In addition, as part of the required analysis under the Regulatory Flexibility Act, the EPA compared the administrative costs that would be incurred by CAFOs under the proposed rule to the existing compliance burden of NPDES CAFO regulations. The Agency concluded that the increment in annualized compliance costs would be significantly less than one percent of estimated annual sales for any of the affected entities.

10. Pursuant to the Regulatory Flexibility Act, EPA certified that the proposed rule "would not have a significant economic impact on a substantial number of small entities." Please describe in detail how EPA arrived at this determination, including any calculations and assumptions relied upon by EPA. Provide documentation sufficient to support your response.

As discussed in the Regulatory Flexibility Act section of the preamble to the proposed rule, the EPA examined sales figures reported in the U.S. Department of Agriculture's (USDA) publicly available aggregated data. The EPA concluded that it is unlikely that the estimated upper-bound burden impact (one hour per CAFO) would exceed one percent of the average annual sales of any of the livestock operations for whom sales figures were reported.

The EPA based its conclusion in part on an assumption that the extra hour of work that the CAFO would incur would equate to a one-time expenditure of $29.30. This figure is based on current U.S. Bureau of Labor statistics, which report an hourly wage of $29.30/hour for the category of First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers (45-1011) in the 2008 National Industry-Specific Occupational Employment and Wage Estimates (adjusted to March 2009 dollars using the Employment Costs Index for Private Industry workers and a fringe rate of 50 percent). The EPA compared this one-time expense with sample sales data from the 2007 USDA agricultural census. This data showed, for example, that a sub-sample of dairies in a representative geographic region reported annual sales that equated to a range of $2,490 to $4,830 in a calculation of one percent of annual sales. Comparable sales calculations for cattle feedlots in a representative watershed indicated a range of $3,344 to $28,612 for one percent of annual sales.

11. Given that two federal courts have struck down EPA's CAFO regulations in the last decade, will EPA ensure that the final rule conforms to the rulings in these cases, which reaffirm the plain language of the CWA?

The EPA will follow the holdings in the two decisions in question, *Waterkeeper* and *National Pork Producers (NPPC)*, with respect to any rulemaking action related to CAFOs. In *Waterkeeper*, the Second Circuit Court of Appeals vacated the provision in the EPA's 2003 CAFO rule requiring all CAFOs with a "potential to discharge" to apply for NPDES permits. The court ruled that the EPA has no statutory authority to require CAFOs to apply for NPDES permits on the basis of a mere potential to discharge, but rather only requires permits for "actual discharges." 399 F.3d at 505. The 2003 rule's permit application requirement was based on a presumption that a CAFO has the potential to discharge, and provided for individual CAFOs to demonstrate on a case-by-case basis that they had no potential to discharge. The court noted that "the EPA has not argued that the administrative record supports a regulatory presumption to the effect that Large CAFOs actually discharge. As such, we do not consider whether, under the CWA as it currently exists, the EPA might properly presume that large CAFOs—or some subset thereof – actually discharge." 399 F. 3d at 506, n.22.

In responding to the *Waterkeeper* decision, the EPA's 2008 CAFO rule proposed a "duty to apply" provision to require CAFOs that "discharge or propose to discharge" to apply for NPDES permits. CAFO owners or operators would assess whether the CAFO discharges or proposed to discharge. The rule required CAFOs that "discharge or propose to discharge" to seek permit coverage, and further defined "propose to discharge" as "designed, constructed, operated, or maintained such that a discharge will occur." 40 C.F.R. section 122.23(d)(1). On March 15, 2011, the Fifth Circuit Court of Appeals vacated the requirement that CAFOs that "propose" to discharge obtain NPDES permits and held that CAFOs are not liable under the CWA for failing to apply for NPDES permits. *Nat'l Pork Producers Council (NPPC) v. EPA*, 635 F.3d 738, 751

(5th Cir. 2011). In vacating the requirement that CAFOs that propose to discharge apply for an NPDES permit (the "duty to apply" provision) the court held that "there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, the EPA's authority is limited to the regulation of CAFOs that discharge." *Id.* The court affirmed that "a discharging CAFO has a duty to apply for a permit." *Id.*

The EPA fully intends that any new regulatory requirements or revisions the Agency issues will adhere to the *Waterkeeper* and *NPPC* decisions described above.

12. In light of the decision of the Court of Appeals for the Fifth Circuit in National Pork Producers v. U.S. Environmental Protection Agency, 635 F.3d 738 (5th Cir. 2011), will EPA restrict any future permitting requirements solely to CAFOs that actually discharge pollutants?

As discussed above, the EPA fully intends to ensure that all future permitting requirements will adhere to the holding in *NPPC* that the EPA can only require CAFOs that discharge pollutants to apply for NPDES permits.

AC-11-002-0013

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 25 2012

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter supplements the U.S. Environmental Protection Agency's December 23, 2011 response to your letter of November 21, 2011, regarding the EPA's recent proposal to collect certain information from concentrated animal feeding operations (CAFOs).

In continuing discussions with your staff regarding the information you requested in your letter of November 21, the EPA agreed to provide additional narrative responses to questions 3(b) and 3(g); these are enclosed. Your staff also requested documentation to support the answer we had included in our December 23rd letter to question 10. Accordingly, we are enclosing the draft information collection request that provided the basis for the EPA response. This analysis is also discussed in the preamble to the proposed rule (also enclosed), at 76 Fed. Reg. 65,448-49 (Oct. 21, 2011).

We will continue to work with your staff concerning this oversight request. If you have further questions, please contact me or have your staff contact Tom Dickerson in my office at (202) 564-3638.

Sincerely,

Arvin Ganesan
Associate Administrator

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

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1. IDENTIFICATION OF THE INFORMATION COLLECTION

1(a) Title of the Information Collection

ICR: NPDES and ELG Regulatory Revisions for Concentrated Animal Feeding Operations (Proposed 308 Rule)
EPA ICR: 1989.08
OMB Control Number: 2040-0250

1(b) Short Characterization/Abstract

This proposed rule will revise the National Pollutant Discharge Elimination System (NPDES) regulations for Concentrated Animal Feeding Operations (CAFOs) to include a new requirement for all CAFOs to submit basic facility information to EPA. The purpose of this proposed rulemaking is to address water quality issues associated with discharges of manure pollutants from CAFOs and to allow EPA to more efficiently and effectively achieve the water quality protection goals and objectives of the CWA, with respect to the implementation and management of the National Pollutant Discharge Elimination System (NPDES) program for CAFOs.

The need for this action also derives from the May 2010 settlement agreement that the Agency reached with environmental petitioners in litigation concerning the 2008 NPDES CAFO rule revisions. Specifically, EPA agreed to propose to collect basic facility information from CAFOs, regardless of whether the CAFO has an NPDES permit. EPA will use Clean Water Act (CWA) § 308[1] information collection authorities to require CAFO owners/operators to submit the data in question.

1(c) Relationship to the NPDES Animals Sector ICRs

In May 2010, EPA consolidated and updated the CAFO and concentrated aquatic animal production (CAAP) facility ICRs into a single Animal Sector ICR (EPA ICR 1898.07).

The information and analyses presented in this supporting Statement are limited to the changes in information collection burden projected to result from the proposed NPDES CAFO Reporting Rule (herein referred to as "308 rule"). These changes are modeled off of the baseline information collection burden for the NPDES CAFO regulations as presented in the May 2010 Animal Sector ICR.

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[1] CWA § 308 States EPA "shall require the owner and operator of any point source" to provide information "whenever required to carry out the objective of this chapter, including but not limited to":

(1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under the Act;
(2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;
(3) any requirement established under this section; and
(4) carrying out Sections 305, 311, 402, 404, and 504 of the Act (33 U.S.C. § 1318(a)).

2. NEED FOR AND USE OF THE COLLECTION

2(a) Need and Authority for the Collection

The purpose of the CWA is "to restore and maintain the chemical, physical and biological integrity of the nation's waters" [section 101(a)]. CWA section 402(a) establishes the NPDES program to regulate the discharge of any pollutant from point sources[2] into waters of the United States. Section 402(a) of the CWA, as amended, authorizes the EPA Administrator to issue permits for the discharge of pollutants if those discharges meet the following requirements:

- All applicable requirements of CWA sections 301, 302, 306, 307, 308, and 403; or
- Any conditions the Administrator determines are necessary to carry out the provisions and objectives of the CWA.

The primary mechanism to ensure that the permits are adequately protective of those requirements is the permit application process. In particular, CWA section 402(a)(2) requires EPA to prescribe permit conditions to assure compliance with requirements "including conditions on data and information collection, reporting and such other requirements as [the Administrator] deemed appropriate."

The CWA also establishes an administrative framework for the NPDES permitting program. CWA section 402(b) authorizes States (which include U.S. territories and Indian tribes that have been authorized in the same manner as a State) to administer the NPDES program once EPA is assured that they meet minimum federal requirements. Authorized States are considered permitting authorities and are responsible for issuing, administering, and ensuring compliance with permits for most point source discharges within their borders. In States without an authorized NPDES program, EPA is the permitting authority and undertakes all permitting activities; although CWA section 401 requires States to certify that EPA-issued NPDES permits establish "effluent limitations, and monitoring requirements necessary to assure that any applicant...will comply with any applicable effluent limitations and other limitations (pursuant to the CWA) and with any other appropriate requirement of State law..." States, tribes, and U.S. territories may waive their right to certify permits if they wish. CWA section 510 provides that States, tribes, and territories may adopt requirements equal to or more stringent than standards established pursuant to CWA provisions.

Section 1318 of 33 U.S.C. provides authority for information collection (i.e., record keeping, reporting, monitoring, sampling, and other information as needed), which applies to point sources; and Section 308(a) of the CWA authorizes EPA to collect certain information from the "owner or operator of any point source" for the following purpose:

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[2] EPA defines a point source as, "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAFO, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff" (40 CFR 122.2).

> to carry out the objective of [the CWA], including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under [the CWA]; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under [§ 308 of the CWA]; or (4) carrying out [sections 305, 311, 402, 404 (relating to State permit programs), 405 and 504 of the CWA] . . . .CWA § 308(a).

Information related to CAFOs' locations, size, and activities satisfies the purpose of CWA §308 because this data is necessary for EPA to implement, strengthen and enforce its NPDES program for CAFOs.

2(b) Practical Utility/Users of the Data

EPA and authorized State permitting authorities use the information routinely collected through NPDES applications and compliance evaluations in the following ways:

- to issue NPDES permits with appropriate limitations and conditions that will protect human health and the environment;
- to allow for public participation in the permitting process;
- to update information in EPA's databases that permitting authorities use to determine permit conditions;
- to calculate national permit issuance, backlog, and compliance statistics;
- to evaluate national water quality;
- to assist EPA in program management and other activities that ensure national consistency in permitting;
- to assist EPA in prioritizing permit issuance activities;
- to assist EPA in policy development and budgeting; and
- to assist EPA in responding to Congressional and public inquiries.

Other users of the data include other governmental entities and the general public. Other governmental entities can use the CAFO data to support their respective missions, and the general public can use information collected through the NPDES program to support independent efforts to protect environmental quality and quality of life.

3. NONDUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA

3(a) Nonduplication

The information collection pursuant to the regulatory changes is site-specific and therefore not readily available from existing sources of information.

3(b) Public Notice Required Prior to ICR Submission to OMB

EPA will publish a summary of the ICR analysis with the proposed rule notice in the Federal Register.

3(c) Consultations

To facilitate the development of the 308 rule, EPA is providing a variety of opportunities for input into the rulemaking process. In addition to the notice-and-comment opportunity afforded via the rulemaking process itself, EPA has also invited input on the 308 rule during meetings with a variety of stakeholders, including State permitting authorities and industry and environmental groups. In addition, EPA will continue to conduct targeted outreach with environmental justice communities and with tribal governments as required under Executive Orders 12898 and 13175.

3(d) Effects of Less Frequent Collection

EPA has made every effort to establish NPDES permit and associated information collection requirements that minimize the burden on respondents while promoting the protection of water quality. NPDES permit applications are the primary form of information collection for regulated CAFOs, and these facilities must reapply for NPDES permits before their existing permits expire. The framework for information collection under the proposed 308 rule is that permitted CAFOs would submit their information one time only, and unpermitted CAFOs would submit their information every ten years. EPA believes that this frequency best balances the need to not overburden facilities with the need to ensure that updates on facility operations are available to EPA.

3(e) General Guidelines

This information collection complies with Paperwork Reduction Act guidelines (5 CFR 1320.5(d)(2)).

3(f) Confidentiality

EPA recognizes the concerns of operators regarding protection of confidential business information (CBI). The proposed 308 rule includes a provision allowing CAFOs to claim that their data is CBI at the time of submission. EPA will handle all confidential data claims in accordance with 40 CFR 122.7, 40 CFR Part 2, and EPA's *Security Manual* Part III, Chapter 9, dated August 9, 1976.

3(g) Sensitive Questions

Sensitive questions are defined in EPA's ICR Handbook, *Guide to Writing Information Collection Requests Under the Paperwork Reduction Act of 1995* as "questions concerning sexual behavior or attitudes, religious beliefs, or other matters usually considered private." The requirements addressed in this ICR do not include sensitive questions.

4. THE RESPONDENTS AND THE INFORMATION REQUESTED

This analysis estimates the 3-year information collection burden based on the universe of respondents for the period spanning January 2009 through December 2011. Although the proposed rule is not expected to be finalized until 2012, EPA is using the 1/2009-12/2012 modeling period for purposes of estimating burden impacts to allow for meaningful comparisons with the baseline information burden collection estimates as modeled in ICR that is currently approved.

4(a) Respondents/SIC Codes

CAFO owner/operators are the respondents for this proposed rulemaking.

EPA categorizes CAFOs on the basis of the primary type of animal produced by the operation. Table 4–1 lists the major categories along with their North American Industry Classification System (NAICS) codes and the corresponding four-digit Standard Industrial Classification (SIC) codes. Note that some industry classification codes may overlap more than one of the categories defined by EPA under the final regulations. For example, swine operations of any size have the same NAICS or SIC codes.

Table 4–1 also provides the applicable animal thresholds. EPA uses these thresholds to distinguish which AFOs are CAFOs. All Large AFOs are defined as CAFOs based on numbers of animals at the operation. AFOs in other size categories may be designated or must meet one of the following two criteria to be defined as a Medium CAFO:

- pollutants are discharged to U.S. waters through a man-made ditch, flushing system, or other similar man-made device; or
- pollutants are discharged directly into U.S. waters that originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the confined animals.

An AFO in the smallest size category may become a CAFO through designation if the facility is a significant contributor of pollutants to waters of the U.S. Any designation must be preceded by an on-site inspection, and facilities designated as CAFOs must meet one of the two discharge criteria noted above.

Table 4–1. CAFO Standard Industrial Classification codes and size thresholds

NAICS code (SIC code)	Animal type	Size thresholds		
		Large	Medium	Small
112111 (0212, 0241), 112112 (0211)	Beef cattle, heifers, calves or veal calves for either slaughter or replacement	> 1,000	300–1,000	< 300
112111, 112120 (0241)	Dairy cattle—mature dairy cattle (whether milked or dry cows) and heifer replacement	> 700	200–700	< 200
112210 (0213)	Swine—each weighing over 25 kilograms—or approximately 55 pounds	> 2,500	750–2,500	< 750
	Immature swine—each weighing less than 25 kilograms, or approximately 55 pounds	> 10,000	3,000–10,000	< 3,000
112310 (0252)	Chickens—laying hens, using liquid manure handling system	> 30,000	9,000–30,000	< 9,000
112310 (0252)	Chickens—laying hens, if other than liquid manure handling system	> 82,000	25,000–82,000	< 25,000
112320 (0251)	Chickens other than laying hens—broilers, fryers and roasters, if other than liquid manure handling system*	> 125,000	37,500–125,000	< 37,500
112330 (0253)	Turkeys	> 55,000	16,500–55,000	< 16,500
112390 (0259)	Ducks, wet manure handling	> 5,000	1,500–5,000	< 1,500
	Ducks, dry manure handling	> 40,000	12,000–40,000	< 12,000
112410 (0214)	Sheep or lambs	> 10,000	3,000-10,000	< 3,000
112920 (0272)	Horses	> 500	150-500	< 150

*Modeling of burden impacts in this ICR does not include an industry category for broilers, fryers or roaster operations with liquid manure operations since operations in this animal sector are typically designed for dry manure handling.

Table 4-2 shows the estimates of total numbers of CAFOs used in developing the respondent universe for the existing 2010 Animal Sector ICR and for this new ICR. The information presented in Table 4–2 was generated by EPA staff using data from the 1997 and 2002 Census of Agriculture, NASS bulletins, National Animal Health Monitoring System (NAHMS) species reports, 2003 Demographics Report, and industry data sources and comments. This number is slightly different from the numbers of CAFOs reported by EPA Regions; however, the Agency elected not to recalibrate its estimates of CAFOs for purposes of this ICR since the estimates do not vary much and since updating the estimate would invalidate any comparisons with the overall NPDES CAFO burden collection as shown in the existing ICR since that ICR is based on the earlier set of universe numbers.

EPA will update its estimates of CAFOs using 2007 Census of Agriculture data and reports from EPA Regions when it renews the Animal Sector ICR in 2013.

Table 4–2 also shows EPA's estimate of the number of CAFOs that have operational or design characteristics historically associated with discharges. These are the facilities that EPA believes could need NPDES permits. These estimates of facilities with discharges are based on estimates of discharging facilities that EPA completed for the 2008 rulemaking, and are documented more fully in the ICR for that effort.

There are no direct costs to States under the proposed approach outlined in the rulemaking. The proposed approach does include a provision for States to have the option of furnishing EPA with datasets on their CAFOs. However, the effort to generate these datasets is not costed as part of the proposed approach in this ICR since EPA assumes that the States that choose to provide the datasets to EPA would be ones for whom this task would not be overly burdensome.

In the preamble to the proposed rule, EPA is putting forth two proposed options. Under the first option, all CAFOs would be required to submit their facility information. Under the second option, only CAFOs in focus watersheds would be subject to the reporting requirement. The burden analysis for this ICR presents burden estimates for the first option, since this approach would apply to all CAFOs rather than a subset. EPA has examined the two proposed approaches, and has determined that the only difference in burden would arise from the difference in number of respondents. Both options have the same required activities and burden level for individual activities.

The proposed rulemaking also puts forth as an alternative an approach under which States would be required to submit available data on CAFOs to EPA. Costs associated with this alternative are presented separately in this ICR in section 6(d), "Cost Overview for Alternative Data Collection Approach."

Table 4–2. CAFO universe and CAFOs needing NPDES permits

CAFO Category	2009			2010			2011		
	CAFO Universe	CAFOs needing NPDES permits	CAFOs that may not need permits	CAFO Universe	CAFOs needing NPDES permits	CAFOs that may not need permits	CAFO Universe	CAFOs needing NPDES permits	CAFOs that may not need permits
Beef	3,106	2,815	292	3,191	2,891	300	3,411	3,109	302
Veal	18	14	4	18	14	4	19	15	4
Heifer	415	362	53	433	377	56	480	422	58
Dairy	3,369	3,369	0	3,511	3,511	0	3,926	3,926	0
Swine	9,289	7,563	1,727	9,639	7,843	1,796	10,800	8,896	1,904
Broilers	2,776	441	2,334	2,913	462	2,451	3,123	525	2,598
Layers(dry)	828	131	696	837	133	703	854	144	710
Layers(wet)	589	589	0	571	571	0	592	592	0
Ducks	45	36	9	45	36	9	49	40	9
Horses	401	360	40	415	373	42	459	416	44
Turkeys	526	84	442	556	88	468	591	100	492
Total	21,362	15,764	5,598	22,130	16,300	5,830	24,304	18,184	6,121

Note: Projections are based on NAHMS species reports, 2003 Demographics Report, and 2002 Census of Agriculture changes from 1997 Census. The figures by sector include both large and medium CAFOs as well as other facilities designated as CAFOs due to discharges. EPA will update the universe estimates to reflect 2007 Census of Agriculture data and reports from EPA Regions once the entire Animal Sector ICR is renewed in 2013.

4 (b) Information Requested

4(b)(i) Data Items, Including Record-keeping Requirements

CAFO Data Items

This ICR costs the requirement for all CAFOs, both permitted and unpermitted, to provide information regarding facility characteristics at the CAFO.

Specifically, EPA is proposing to collect basic facility data from CAFOs including name, address and location. Details on the questions are not listed here in this ICR due to the potential for changes to the specifics to be made late in the proposal development process.

State Data Items

EPA anticipates that CAFOs will submit the information directly to EPA largely using an electronic online system. Paper submissions will also be accepted and then later entered by EPA into the database. Consequently, the rulemaking will not directly affect small governments or States.

4(b)(ii) Respondent Activities

CAFO Activities

EPA estimates that the additional burden imposed by this proposed rule for all CAFOs to submit their facility information is 1 hour for both permitted and unpermitted CAFOs. This will be a one-time activity for permitted CAFOs. For unpermitted CAFOs, the burden will recur every ten years.

This estimate is for the reporting costs associated with understanding the requirements, navigating the website, collecting the various information pieces, and entering the data. Although unpermitted CAFOs do not have existing NPDES permit applications to which they can refer, they are assumed to have their facilities' operational and nutrient management planning information readily accessible as part of meeting the requirement in the existing NPDES CAFO regulations to complete an assessment to show that they do not need to apply for NPDES permit coverage.

For purposes of comparison, the ICR currently approved for information collection activities under the existing NPDES CAFO regulations assumes that CAFOs incur a labor burden of 9 hours to file an NPDES permit application.

There are some minimal recordkeeping costs associated with the proposed rulemaking for documenting the submission of data. However, these costs are minor and are subsumed in the costs presented for reporting.

State Activities

The rulemaking will not impose additional burden on States even where they are the permitting authority.

5. THE INFORMATION COLLECTED—AGENCY ACTIVITIES, COLLECTION METHODOLOGY, AND INFORMATION MANAGEMENT

5(a) Agency Activities

Under the proposed rulemaking, EPA would be the entity responsible for receiving, storing and managing the data. In addition, the Agency would be responsible for developing and managing the system in which the data is housed.

5(b) Collection Methodology and Management

EPA anticipates that CAFOs will submit the information directly to EPA largely using an electronic online system. Paper submissions will also be accepted and then later entered into the database.

5(c) Small Entity Flexibility

Whereas EPA establishes thresholds largely on the basis of the number of animals, the Small Business Administration (SBA) uses revenue-based thresholds to distinguish small agricultural operations from larger operations. Consequently, EPA developed a model to convert the SBA's revenue thresholds to the number of animals by sector. EPA used the SBA's revenue-based definitions (except for laying hens) and data from USDA and the industry for this effort. The SBA and EPA thresholds are shown for each sector in Table 5–1. A comparison of the SBA-based animal thresholds with EPA's animal thresholds indicates that most medium and small CAFOs are small entities and some Large CAFOs will be small entities as well.

As in the 2003 and 2008 CAFO rules, EPA's premise continues to be that any regulatory burden should focus on those operations posing the greatest risk to water quality and public health—especially operations with large numbers of animals. In addition, estimates of burden for the 308 rule are such that the burden on any one CAFO is relatively small.

Table 5–1. SBA and EPA Small Business thresholds for animal sectors

NAICS code (SIC code)	Animal sector	SBA threshold (revenue in millions)[a]	Corresponding SBA animal threshold (number of animals)	CAFO Size Threshold (number of animals)
112112 (0211)	Beef cattle feedlots	$1.5	1,400	Large > 1,000
112111, 112120 (0241)	Dairy farms and dairy heifer replacement production	$0.75	300[b]	Large > 700 Medium > 200
112210 (0213)	Hogs	$0.75	2,100[c]	Large > 2,500 Medium > 750
112310 (0252)	Chicken eggs	$1.5[d]	61,000	Large > 30,000
112320 (0251)	Broiler, fryer, roaster chickens	$0.75	375,000	Large > 125,000

NAICS code (SIC code)	Animal sector	SBA threshold (revenue in millions)[a]	Corresponding SBA animal threshold (number of animals)	CAFO Size Threshold (number of animals)
112330 (0253)	Turkeys and turkey eggs	$0.75	37,500	Large > 55,000

a. SBA thresholds effective February 22, 2002. Classification is met if the operation has revenue equal to or less than the threshold cited.
b. Mature dairy cattle.
c. Each weighing over 25 kilograms.
d. EPA consulted with SBA on the use of this alternative definition; the original threshold is $9.0 million.
Note: Certain animal sectors (e.g., sheep and lambs, horses, and ducks) are not subject to ELG requirements, and EPA has not developed corresponding small business animal thresholds for those sectors.

5(d) Collection Schedule

This ICR, when final, will cover the initial 3-year period following promulgation of the final rule. For this ICR, annual burden estimates are based on the universe of respondents estimated to incur information collection burden in the course of the 3-year modeling period. Table 5-2 shows the number of CAFO respondents that EPA projects for each year of the ICR based on the reporting schedule in the proposed rule for CAFOs with and without NPDES permits.

Table 5–2. ICR Respondents Schedule

CAFO Respondent Type	Year 1	Year 2	Year 3	3-Year Annual Average
Non-Permitted, existing	5,404	0	0	1,801
Non-Permitted, new	193	0	0	64
Permitted, existing	15,283	0	0	5,094

6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

The summaries below provide brief descriptions of CAFO respondent activities. The impacts presented in this ICR reflect only the impacts associated with the incremental burden resulting specifically from the proposed approach for data collection from all CAFOs put forth in the proposed rule. The second proposed option of collecting data from CAFOs in focus watersheds is a subset of the costs outlined in this ICR. However, since the universe of CAFOs that would be subject to the second option is indeterminate at this time, these costs are not presented as part of this analysis.

6(a) Estimating Respondent Burden

CAFO Burden

Table 6–1 specifies the burden hours per response for each new activity required of CAFOs under this proposed rule.

Table 6–1. Burden for 308-rule related activities for CAFOs and frequency of response

Activities	Hours per response	Frequency of response
308 Information Collection		
Permitted CAFOs	1	First year only
Unpermitted CAFOs	1	Every 10 years

State Burden

The rulemaking will not impose additional burden on States even where they are the permitting authority. States will have the option of providing EPA with datasets on their CAFOs where the State has all the information. As mentioned above, the effort to generate these datasets is not costed in this ICR since EPA assumes that the States that choose to provide the datasets to EPA would be ones for whom this task would not be overly burdensome.

6(b) Estimating Respondent Costs

This section describes how EPA derived the cost to respondents for each of the activities described above. Costs for this ICR are presented in 2009 dollars to allow easy comparison to other cost estimates developed for the 2009 Animal Sector ICR.

6(b)(i) Estimating Respondent Labor Costs

CAFO Labor Costs

The cost imposed on respondents for the requirements discussed in this ICR is a function of the burden placed on them for compiling and submitting the information described above and the wages of a typical worker performing these activities. Table 6-2 show the labor rates used in this ICR.

Table 6–2. Labor Rates

Labor Rates, including overhead	Labor rate ($/hour)	Source/Notes
CAFO		
General labor	$16.94	2008 National Industry-Specific Occupational Employment and Wage Estimates: 45-2093 Farmworkers, Farm and Ranch Animals. Adjusted to March 2009 dollars using the Employment Costs Index for Private Industry workers and a fringe rate of 50 percent.
Farm Manager	$29.30	2008 National Industry-Specific Occupational Employment and Wage Estimates: 45-1011 First-Line Supervisors/Managers of Farming, Fishing, and Forestry Workers. Adjusted to March 2009 dollars using the Employment Costs Index for Private Industry workers and a fringe rate of 50 percent.
Agronomist	$42.44	2008 National Industry-Specific Occupational Employment and Wage Estimates: 19-1013 Soil and Plant Scientists. Adjusted to March 2009 dollars using the Employment Costs Index for Private Industry workers and a fringe rate of 50 percent.

State Labor Costs

The rulemaking will not impose additional burden on States even where they are the permitting authority.

6(b)(ii) Estimating Capital and Operation and Maintenance (O&M)Costs

CAFO Capital and O&M Costs

The proposed rule would not impose additional capital and O&M costs on CAFOs.

State Capital and O&M Costs

The rulemaking will not impose additional capital and O&M costs on States even where they are the permitting authority.

6(b)(iii) Capital Start-up vs. Operation and Maintenance (O&M) Costs

See 6(b)(ii), above.

6(b)(iv) Annualizing Capital Costs

See 6(b)(ii), above.

6(c) Estimating Agency Burden and Cost

Agency Burden

EPA anticipates that CAFOs will submit the information directly to EPA largely using an electronic online system. EPA estimates that it will spend 0.5 hours per response. This time includes record keeping and conducting follow-up activities for incomplete or erroneous submittals. EPA would also need to develop the Electronic Reporting System to receive, compile, and store the information. EPA has estimated that it would cost approximately $218,000 to build this system, equivalent to an annual average capital costs of approximately $31,050. ($218,000 discounted at 7.0% rate over 10 years). EPA estimates that it would cost approximately $21,000 per year to operate and maintain the system.

Agency Labor Costs

EPA used an hourly wage rate for a GS-12, Step One Federal employee to estimate the cost of the Agency staff. The U.S. Office of Personnel Management 2009 General Schedule reported an hourly rate of $28.45. Multiplying this rate by 1.6 to incorporate typical Federal benefits (OPM, 1999), EPA obtained a final hourly rate of $45.52 for this labor category.

6(d) Cost Overview for Alternative Data Collection Approach

Under the scenario that would require States to submit the information to EPA, the PRA burden would shift from CAFOs to States since States would be responsible for reporting the CAFO data to EPA. EPA projects that the reporting burden under this alternative would be biggest for those States that would need to provide paper files to the Agency. To complete a conservative

cost estimate, EPA determined what the cost would be if all States were to submit their CAFO records in this manner. If this were the case, EPA estimates that the cumulative cost to States would be reflective of a per-entity cost of photo-copying individual records on all facilities.

To develop a burden estimate for this alternative, EPA expects that NPDES-authorized states would need to find, copy/scan, and mail/e-mail a 3-page paper facility record (e.g., an NOI, registration, or license). EPA assumes that States will perform these activities for multiple CAFOs simultaneously; therefore, the estimated time required to complete this task is one hour for every 20 facilities. Additionally, EPA assumes a cost of $0.025 per page copied.

The additional annual burden hours associated with this alternative data collection approach is 348 hours for State respondents. The total additional State respondent average annual costs over the 3-year period will be $16,391 ($14,303 for labor cost and $2,088 for O&M). There is no additional burden or cost on CAFO respondents resulting from the alternative data collection approach.

6(e) Estimating the Respondent Universe and Total Burden and Costs

Table 6–3 presents the annual burden and costs for all CAFOs to address the requirements in the proposed rule. Table 6–4 presents the annual Federal government cost and burden.

Table 6–3. Annual average respondent burden and cost – CAFOs

	Baseline (2010 Animal Sector ICR)	Net Changes from 308 Rule	**Annual Totals Under Proposed Rule**
Unique Respondents (number)	22,844	0	22,844
Responses (number)	2,934,438	6,960	2,941,398
Burden (hours)	2,810,266	6,960	2,817,226
Costs (labor)	$56,708,595	$203,929	$56,912,524
Costs (capital)-annualized	$228,971	$0	$228,971
Costs (O&M)	$6,705,593	$0	$6,705,593
Total Costs	$63,643,158	$203,929	$63,847,087

Table 6–4. Annual average Federal government burden and cost

	Baseline (2010 Animal Sector ICR)	Net Changes from 308 Rule	**Annual Totals Under Proposed Rule**
Responses (number)	1,303	6,960	8,263
Burden (hours)	15,188	3,480	18,668
Costs (labor)	$691,350	$158,411	$849,760
Costs (capital)-annualized	$0	$31,050	$31,050
Costs (O&M)	$62,463	$21,000	$83,463
Total Costs	$753,813	$210,461	$964,273

6(f) Bottom Line Burden Hours and Costs

There will be an annual average of 6,960 additional CAFO responses over the 3-year period under this ICR.[3] The additional annual burden hours associated with the proposed rulemaking are estimated to total to 6,960 hours for all CAFO respondents (5,094 hours for permitted CAFOs; 1,866 hours for non-permitted CAFOs). The total additional CAFO respondent average annual costs over the 3-year period will be $203,929 ($149,260 for permitted CAFOs; $54,669 for non-permitted CAFOs).

There is no additional burden or cost on States resulting from the proposed rule.

EPA is responsible for collection of data and record keeping. There will be an annual average of 6,960 additional responses during the 3-year ICR period. Average agency burden increase is 3,480 hours for the 3-year period. Agency costs will increase an average of $210,461 for the 3-year ICR period.

6(g) Reasons for Change in Burden

This ICR presents the burden impacts of EPA's proposed 308 rule. The analysis of net burden impacts from the proposed rule revisions presented in this ICR controls for an adjusted calculation of baseline impacts compared to baseline impacts originally presented in the 2010 Animals Sector ICR (EPA ICR No. 1989.07).

6(h) Burden Statement

The annual public reporting and recordkeeping burden increase associated with the new proposed reporting provisions to require all CAFOs to submit facility information is estimated to total to 6,960 hours for all CAFO respondents. The annual average number of CAFO responses is 6,960.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR Part 9 and 48 CFR Chapter 15.

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[3] CAFO responses do not mean number of CAFOs. The proposed rule does not add CAFOs to the total universe of CAFOs or the number of CAFOs that need to seek permits. However, CAFOs as a group are required to perform new information collection activities under the proposed rule.

In summary, EPA's analysis for the Paperwork Reduction Act (PRA) projects (as shown in Table 6–3) that CAFO operators will experience an increase in total annual administrative burden of approximately $0.2 million as a result of the EPA proposed rule to collect facility information from all CAFOs. There are no impacts to State permitting authorities.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 122

[EPA–HQ–OW–2011–0188; FRL–9481–7]

RIN 2040–AF22

National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA co-proposes two options for obtaining basic information from CAFOs to support EPA in meeting its water quality protection responsibilities under the Clean Water Act (CWA). The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA. Under one co-proposed option, EPA would use the authority of CWA section 308 to obtain certain identifying information from all CAFOs. Under the other option, EPA could use the authority of CWA section 308 to obtain this information from CAFOs that fall within areas that have been identified as having water quality concerns likely associated with CAFOs (focus watersheds). However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to obtain identifying information about CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This information would allow EPA to achieve more efficiently and effectively the water quality protection goals and objectives of the CWA. EPA also requests comment on three alternative approaches to gather information about CAFOs, which could be used to achieve the objectives of this proposed action in protecting water quality.

DATES: Comments on this proposed action must be received on or before December 20, 2011. EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0188, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2011–0188.
- *Fax:* (202) 566–9744.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, Attention Docket ID No. EPA–HQ–OW–2011–0188, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2011–0188. Such deliveries are accepted only during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Webinar: EPA plans to hold two Webinars in November, 2011 to provide an overview of, and answer questions about, the proposed rule requirements. Information about how to register and access the Webinar can be found on EPA's Web site at *http://cfpub.epa.gov/npdes/afo/aforule.cfm* no later than October 24, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information contact, Becky Mitschele, Water Permits Division, Office of Wastewater Management (4203M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–6418; fax number (202) 564–6384; e-mail address: *mitschele.becky@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This proposed rulemaking would apply to concentrated animal feeding operations (CAFOs) as defined in the National Pollutant Discharge Elimination System (NPDES) regulations at 40 CFR 122.23(b)(2), pursuant to section 502(14) of the Clean Water Act ("CWA"). An animal feeding operation (AFO) is a CAFO if it meets the regulatory definition of a Large or Medium CAFO (40 CFR 122.23 (b)(4) or (6)) or has been designated as a CAFO (40 CFR 122.23 (c)) by the NPDES permitting authority or by EPA. The following table provides the size thresholds for Large, Medium and Small CAFOs in each animal sector.

TABLE 1—SUMMARY OF CAFO SIZE THRESHOLDS FOR ALL SECTORS

Sector	Large	Medium [1]	Small [2]
Cattle or cow/calf pairs	1,000 or more	300–999	Less than 300.
Mature diary cattle	700 or more	200–699	Less than 200.
Veal calves	1,000 or more	300–999	Less than 300.
Swine (weighing over 55 pounds)	2,500 or more	750–2,499	Less than 750.
Swine (weighing less than 55 pounds)	10,000 or more	3,000–9,999	Less than 3,000.
Horses	500 or more	150–499	Less than 150.
Sheep or lambs	10,000 or more	3,000–9,999	Less than 3,000.
Turkeys	55,000 or more	16,500–54,999	Less than 16,500.
Laying hens or broilers (liquid manure handling system).	30,000 or more	9,000–29,999	Less than 9,000.
Chickens other than laying hens (other than a liquid manure handling system).	125,000 or more	37,500–124,999	Less than 37,500.
Laying hens (other than a liquid manure handling system).	82,000 or more	25,000–81,999	Less than 25,000.
Ducks (other than a liquid manure handling system).	30,000 or more	10,000–29,999	Less than 10,000.
Ducks (liquid manure handling system)	5,000 or more	1,500–4,999	Less than 1,500.

Notes:
[1] May be designated or must meet one of the following two criteria to be defined as a medium CAFO: (A) Discharges pollutants through a man-made device; or (B) directly discharges pollutants into waters of the United States which pass over, across, or through the facility or otherwise come into direct contact with the confined animals. 40 CFR 122.23(b)(6).
[2] Not a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis. 40 CFR 122.23(b)(9).

That table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed rulemaking. The table lists the types of entities that EPA is currently aware of that could be regulated by this action. Other types of entities not listed in the table could also be CAFOs. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

To determine whether your operation is a CAFO, you should carefully examine the applicability criteria in 40 CFR 122.23. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency might ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

2. Submitting Comments to EPA

Direct your comments to Docket ID No. EPA–HQ–OW–2011–0188. EPA's policy is that all comments received will be included in the public docket without change and could be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment because of technical difficulties and cannot contact you for clarification, EPA might not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

3. Submitting Confidential Business Information

Do not submit CBI information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part of or all the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Under what legal authority is this proposed action issued?

Today's proposed rulemaking is issued under the authority of sections 301, 304, 305, 308, 309, 402, 501, and 504 of the CWA, 33 U.S.C. 1311, 1314, 1315, 1318, 1319, 1342, and 1361.

II. Background

A. The Clean Water Act

Congress passed the Federal Water Pollution Control Act Amendments of 1972, ("Clean Water Act" or "CWA") to "restore and maintain the chemical, physical, and biological integrity of the nation's waters" 33 U.S.C. 1251(a). Section 301(a) of the CWA prohibits the "discharge of any pollutant by any person" except in compliance with the Act. 33 U.S.C. 1311(a). Among the core provisions, the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program to authorize and regulate the discharge of pollutants from point sources to waters of the United States. 33 U.S.C. 1342. Section 502(14) of the CWA includes the term "CAFO" in the definition of "point source;" specifically, the term "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *" 33 U.S.C. 1362(14). Section 501 authorizes the Administrator to promulgate rules to carry out the Administrator's functions under the CWA. EPA has issued comprehensive regulations that implement the NPDES program at 40 CFR parts 122–124.

Section 308 of the CWA authorizes EPA to collect information from the "owner or operator of any point source" for the following purpose:

> To carry out the objectives of [the CWA], *including but not limited* to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under [the CWA]; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under [§ 308 of the CWA]; or (4) carrying out [sections 305, 311, 402, 404 (relating to state permit programs), 405 and 504 of the CWA]. * * * 33 U.S.C. 1318(a).

Section 308(a)(3)(A) of the Act provides that, in furtherance of the stated objectives, EPA may require owners or operators of point sources to establish and maintain records; make reports; install, use, and maintain monitoring equipment; sample effluent; and provide such other information as EPA may reasonably require to carry out the objectives of the Act. 33 U.S.C. 1318(a). Section 309 of the CWA authorizes EPA to assess penalties for violations of section 308 of the CWA. 33 U.S.C. 1319.

B. Environmental and Human Health Impacts of CAFOs

Despite more than 35 years of regulating CAFOs, reports of water quality impacts from large animal feeding operations persist. At the time of the 2003 CAFO rulemaking, the Agency received estimates from USDA indicating that livestock operations where animals are confined produce more than 300 million tons of manure annually. 68 FR 7180. On the basis of that figure, EPA estimated that animals raised in confinement generate more than three times the amount of raw waste than the amount of waste that is generated by humans in the United States. *Id.* For the 2003 CAFO rulemaking, EPA estimated that CAFOs collectively produce 60 percent of all manure generated by farms that confine animals. *Id.*

Pollutants from manure, litter, and process wastewater can affect human health and the environment. Whether from poultry, cattle, or swine, the manure, litter and process wastewater contains substantial amounts of nutrients (nitrogen, phosphorus, and

potassium), pathogens, heavy metals, and smaller amounts of other elements and pharmaceuticals. This manure, litter, and process wastewater commonly is applied to crops associated with CAFO operations or transferred off site. Where over-applied or applied before precipitation events, excess nutrients can flow off of agricultural fields, causing harmful aquatic plant growth, commonly referred to as "algal blooms," which can cause fish kills and contribute to "dead zones." In addition, algal blooms often release toxins that are harmful to human health.

To improve the Agency's ability to estimate ecological and human risk for chemical and microbial contaminants that enter water resources, EPA is continuing research to evaluate the effect of CAFOs on surface and ground water quality. Effective control of pathogens originating in livestock manure or poultry litter could improve human and ecosystem health through reductions in waterborne disease organisms and chemicals. More than 40 diseases found in manure can be transferred to humans, including causative agents for Salmonellosis, Tuberculosis, Leptospirosis, infantile diarrheal disease, Q-Fever, Trichinosis, and Giardiasis. Exposure to waterborne pathogen contaminants can result from both recreational use of affected surface water (accidental ingestion of contaminated water and dermal contact during swimming) and from ingestion of drinking water derived from either contaminated surface water or groundwater. JoAnn Burkholder, *et al.*, Impacts of Waste from Concentrated Animal Feeding Operations on Water Quality, 115 *Env't Health Perspectives* 310 (2007).

Heavy metals such as arsenic, cadmium, iron, lead, manganese, and nickel are commonly found in CAFO manure, litter, and process wastewater. Some heavy metals, such as copper and zinc, are essential nutrients for animal growth—especially for cattle, swine and poultry. However, farm animals excrete excess heavy metals in their manure, which in turn is spread as fertilizer, causing potential runoff problems. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004); and U.S. EPA, *Development Document for the Final Revisions to the National Pollutant Discharge Elimination System Regulation and the Effluent Guidelines for Concentrated Animal Feeding Operation,* EPA–821–R–032–001 (2002). EPA reported approximately 80 to 90 percent of the copper, zinc, and arsenic consumed is excreted. Possible adverse effects reported in the literature include the risk of phytotoxicity, groundwater contamination and deposition in river sediment that may eventually release to pollute the water. *U.S. EPA, Risk Assessment Evaluation for Concentrated Animal Feeding Operations,* EPA–600–R–04–042 (2004), pp. 43–46. Repeated application of manure above agronomic rates could result in exceedances of the cumulative metal loading rates established in EPA regulations at 40 CFR part 503, thereby potentially impacting human health and the environment. *U.S. EPA, Preliminary Data Summary Feedlots Point Source Category Study,* EPA–821–R–99–002 (1999), pp. 26–27. The health hazards that may result from chronic exposure to heavy metals at certain concentrations can include kidney problems from cadmium, Public Health Statement Cadmium (CAS #7440–43–9), available at *http://www.atsdr.cdc.gov/PHS/PHS.asp?id=46&tid=15;* nervous system disorders, and neurodevelopmental problems (IQ deficits) from lead, *Lead and Compounds (inorganic)* (CASRN 7439–92–1), available at *http://www.epa.gov/iris/subst/0277.htm;* and cardiovascular effects, diabetes, respiratory effects, nervous system problems, and reproductive effects and cancers from multiple tissues from arsenic, NRC *Arsenic in Drinking Water,* National Academy Press (2001), available at *http://www.nap.edu/openbook/0309076293/html/R1.html.*

To promote growth and to control the spread of disease, antibiotics, growth hormones and other pharmaceutical agents are often added to feed rations or water, directly injected into animals, or administered via ear implants or tags. The annual amount of antimicrobial drugs sold and distributed in 2009 for use in food animals was 13.3 million kilograms or 28.8 million pounds. *U.S. Food and Drug Administration, 2009 Summary Report on Antimicrobials Sold or Distributed for Use in Food-producing Animals* (2010). This was a significant increase in the annual use from 8.8 million kilograms or approximately 18 million pounds reported in 1995. *U.S. Congress, Office of Technology Assessment, Impacts of Antibiotic-Resistant Bacteria,* OTA–H–629 (1995).

Most antibiotics are not metabolized completely and are excreted from the treated animal shortly after medication. As much as 80–90 percent of some administered antibiotics occur as parent compounds in animal wastes. *Scott Bradford et al., Reuse of Concentrated Animal Feeding Operation Wastewater on Agricultural Lands,* 37 *J. Env't Quality* 97 (2008). Synthetic steroid hormones are extensively used as growth promoters for cattle in the United States. *Id.* Steroid hormones are of particular concern because there is laboratory evidence that very low concentrations of these chemicals can adversely affect the reproduction of fish and other aquatic species. *Id.* The dosing of livestock animals with antimicrobial agents for growth promotion and prophylaxis may promote antimicrobial resistance in pathogens, increasing the severity of disease and limiting treatment options for sickened individuals. *U.S. EPA, Detecting and Mitigating the Environmental Impact of Fecal Pathogens Originating from Confined Animal Feeding Operations: Review,* EPA600–R–06–021 (2005).

In the most recent National Water Quality Inventory, 29 states specifically identified animal feeding operations as contributing to water quality impairment. *U.S. EPA, National Water Quality Inventory: Report to Congress—*2004 Reporting Cycle, January 2009. EPA–841–R–08–001. The findings of this report are corroborated by numerous reports and studies conducted by government and independent researchers that identify the animal livestock industry as an important contributor of surface water pollution. For example, the GAO found in its 2008 Report to Congressional Requesters that since 2002, 68 studies had been completed that examined air and water quality issues associated with animal feeding operations. Fifteen of those have directly linked air and water pollutants from animal waste to specific health or environmental impacts. GAO–08–944 (2008). For further discussion of this Report, see the section *United States Government Accountability Office Report* of this preamble.

Water quality impacts from CAFOs may be due, in part, to inadequate compliance with existing regulations or to limitations in CAFO permitting programs. EPA believes that basic information about CAFOs would assist the Agency in addressing those problems. Complete and accurate information allows governments, regulated communities, interest groups and the public to make more informed decisions regarding ways to protect the environment.

C. United States Government Accountability Office Report

In September 2008, the United States Government Accountability Office (GAO) issued a report to congressional requesters, recommending that EPA "should complete the Agency's effort to develop a national inventory of

permitted CAFOs and incorporate appropriate internal controls to ensure the quality of the data." *U.S. Gov't Accountability Office, Concentrated Animal Feeding Operations—EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality,* GAO–08–944 5 (2008), page 48. EPA officials stated that "EPA does not have data on the number and location of CAFOs nationwide and the amount of discharges from these operations. Without this information and data on how pollutant concentrations vary by type of operation, it is difficult to estimate the actual discharges occurring and to assess the extent to which CAFOs may be contributing to water pollution.", *Id.* page 31. The report also stated that "despite its long-term regulation of CAFOs, * * * EPA has neither the information it needs to assess the extent to which CAFOs may be contributing to water pollution, nor the information it needs to ensure compliance with the Clean Water Act." *Id.* page 48.

The GAO report contains a review of EPA's data on permitted CAFOs, and the GAO determined that data obtained from state agencies "are inconsistent and inaccurate and do not provide EPA with the reliable data it needs to identify and inspect permitted CAFOs nationwide." *Id.* page 17. EPA had received its data from EPA Regional offices and from the states relating to permits issued to CAFOs between 2003 and 2008. GAO interviewed officials in 47 states to determine the accuracy and reliability of the data EPA collected. On the basis of that information, GAO determined that EPA's data was not reliable and could not be used to identify trends in permitted CAFOs over the five-year period. In addition to reviewing EPA's data on CAFOs, the GAO also reviewed data from other Federal agencies. GAO concluded that no Federal agency currently collects accurate and consistent data on the number, size, and location of CAFOs as defined by the CAFO regulations. *Id.* page 4. EPA responded to the draft GAO report stating that the Agency would develop a comprehensive national inventory of CAFOs. *Id.* page 76.

D. United States Office of Management and Budget Report

More recently, the Office of Management and Budget (OMB) issued a report to Congress that describes the value of data collection efforts that minimize burden on reporting entities and have practical utility. In this report, OMB identifies the benefits and costs of Federal regulations and unfunded mandates on states, local and tribal entities. *U.S. Office of Management and Budget, 2011 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (2001). This report stressed the importance of ensuring that regulations are "evidence-based and data-driven and hence based on the best available work in both science and social science." *Id.* page 5. Specifically, the report briefly outlines steps and best practices that are consistent with OMB's recent recommendations for "flexible, empirically informed approaches; increased openness about costs and benefits; and the use of disclosure as a regulatory tool." *Id.* page 5. EPA believes that today's co-proposed rulemaking would be consistent with OMB's recommendations by promoting transparency and providing a comprehensive body of data that would serve as a basis for sound decision-making about EPA's CAFO program.

E. Litigation Regarding the 2008 Revised NPDES Permit Regulation and Effluent Limitations Guidelines for CAFOs in Response to the Waterkeeper Decision

EPA's regulation of discharges from CAFOs dates to the 1970s. EPA initially issued national effluent limitations guidelines and standards (ELGs) for feedlots, on February 14, 1974 and NPDES CAFO regulations on March 18, 1976. 39 FR 5704; 41 FR 11458. In February 2003, EPA issued revised CWA permitting requirements, ELGs and new source performance standards for CAFOs. 68 FR 7176. The 2003 CAFO rule required the owners or operators of all CAFOs to seek coverage under an NPDES permit, unless they demonstrated no potential to discharge. With implementation of the 2003 rule, EPA and state permitting authorities would have obtained information about the universe of CAFOs. However, both environmental groups and industry challenged the 2003 final rule, and in February 2005, the U.S. Court of Appeals for the Second Circuit issued its decision in *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2d Cir. 2005). Among other things, the court held that EPA does not have authority under the CWA to require CAFOs that have only a potential to discharge to obtain NPDES permits.

In 2008, EPA issued revised regulations in response to the *Waterkeeper* decision. Among other changes, the revised regulations required only those CAFOs that discharge or propose to discharge to obtain an NPDES permit. Subsequently, environmental groups and industry filed petitions for review of the 2008 rule, which were consolidated in the U.S. Court of Appeals for the Fifth Circuit. EPA signed a settlement agreement with the environmental petitioners in which EPA committed to propose a rule, pursuant to CWA section 308, that would require CAFOs to provide certain information to EPA. The settlement agreement provides the context and timeline for this proposed rulemaking.

The settlement agreement commits EPA to propose, by October 14, 2011, a rule under section 308 of the CWA, 33 U.S.C. 1318, to require all owners or operators of CAFOs, whether or not they have NPDES permits, to submit certain information to EPA. EPA agreed to propose a rule requiring CAFOs to submit the information listed below; or, if EPA decides not to include one of the items in the proposal, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items. EPA committed to take final action on the rule by July 13, 2012. The settlement agreement does not commit EPA to the substance of any final action. The settlement agreement expressly states that nothing in the agreement shall be construed to limit or modify the discretion accorded EPA by the CWA or by general principals of administrative law. Nor does the CWA require EPA to collect the information proposed in today's notice.

The items listed in the settlement agreement to be addressed in the proposal include the following:

1. Name and address of the owner and operator;
2. If contract operation, name and address of the integrator;
3. Location (longitude and latitude) of the operation;
4. Type of facility;
5. Number and type(s) of animals;
6. Type and capacity of manure storage;
7. Quantity of manure, process wastewater, and litter generated annually by the CAFO;
8. Whether the CAFO land-applies;
9. Available acreage for land application;
10. If the CAFO land-applies, whether it implements a nutrient management plan for land application;
11. If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
12. If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater;
13. Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure; and

14. Whether the CAFO has applied for an NPDES permit

On March 15, 2011, the Fifth Circuit Court of Appeals vacated the requirement in EPA's 2008 CAFO rule that CAFOs that "propose" to discharge obtain NPDES permits and held that CAFOs are not liable under the CWA for failing to apply for NPDES permits. *Nat'l Pork Producers Council (NPPC)* v. *EPA*, 635 F.3d 738 (5th Cir. 2011) (herein referred to as *NPCC*). The Fifth Circuit held that there must be an "actual discharge to trigger the CWA requirement to obtain a permit." *NPPC*, 635 F.3d at 751. EPA's authority to collect information under section 308 from "point sources" is broader than EPA's authority to require and enforce a requirement to apply for an NPDES permit, as interpreted by *NPPC*. In particular, EPA is authorized under section 308 to collect information from any point source, and point sources are defined to include "any discernible, confined and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged." 33 U.S.C. 1362(14). Today's proposed rulemaking is therefore not affected by this ruling of the Fifth Circuit Court of Appeals.

In vacating the requirement that CAFOs that propose to discharge apply for an NPDES permit (the "duty to apply" provision), the court held that "there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, EPA's authority is limited to the regulation of CAFOs that discharge." *NPPC*, 635 F.3d at 751. The court's holding that EPA may regulate only those CAFOs that discharge is limited to the specific type of regulation at issue before the court: the duty to apply for a permit. Today's notice proposes options for gathering basic information from CAFOs; it does not require them to obtain permits.

EPA proposes to gather information from CAFOs pursuant to its authority in CWA section 308 to collect information. This information-gathering authority is broader than EPA's authority to require permit coverage, which was at issue in *NPPC*. Section 308 authorizes information collection from "point sources," which includes CAFOs that discharge or may discharge. 33 U.S.C 1318(a); 1362(14) (the term "point source" is defined as "any discernible, confined, and discrete conveyance, including * * * any * * * concentrated animal feeding operation * * * from which pollutants are or may be discharged * * *"). The plain language of section 308 expressly authorizes information collection for a list of purposes including assistance in developing, implementing, and enforcing effluent limitations or standards, such as the prohibition against discharging without a permit. 33 U.S.C. 1318(a). The information EPA proposes to collect is limited to basic information about CAFOs and would enable EPA, states, and others to determine the number of CAFOs in the United States and where they are located and would assist EPA in developing, implementing, and enforcing the requirements of the Act.

III. This Proposed Action

A. Proposed Action Overview and Objectives

The purpose of this co-proposal is to improve and restore water quality by collecting facility-specific information that would improve EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA, including the requirement to obtain an NPDES permit if they discharge pollutants to waters of the U.S. Section 402 of the CWA authorizes EPA to regulate all point source discharges through the NPDES permitting program. The NPDES program regulates discharges from such industries as manufacturing and processing plants (*e.g.*, textile mills, pulp and paper mills), municipal wastewater treatment plants, construction sites and CAFOs. Unlike many other point source industries, EPA does not have facility-specific information for all CAFOs in the United States. Facility location and basic operational characteristics that relate to how and why a facility may discharge is essential information needed to carry out NPDES programmatic functions, which include the following:

- Evaluating NPDES program effectiveness;
- Identifying and permitting CAFOs that discharge;
- Conducting education and outreach to promote best management practices;
- Determining potential sources of water quality impairments and taking steps to address those impairments;
- Estimating CAFO pollutant loadings—by facility, by watershed, or some other geographical area; and
- Targeting resources for compliance assistance or enforcement.

The six categories listed above represent key activities necessary to ensure that CAFOs are meeting their obligations under the CWA regarding protection of water quality from CAFO discharges and can be carried out most efficiently and effectively when EPA and states have access to facility contacts and other basic information about CAFOs. This information could be used to better protect public health and welfare of communities near CAFOs, including environmental justice for minority, indigenous or low-income communities.

In today's proposed rulemaking, EPA co-proposes two options by which the Agency may achieve today's rule objectives: Option 1 (*Section C.)* would apply to all CAFOs; Option 2 (Section D) would identify focus watersheds where CAFO discharges may be causing water quality concerns and EPA could use its section 308 authority to obtain information from CAFOs in these areas. However, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to provide the information is necessary. Both of these options propose revisions to the NPDES regulations, which would allow EPA to obtain necessary information from CAFOs, including their contact information, location of the CAFO's production area, NPDES permitting status, number, and type of animals, and number of acres available for land application. *Section F. Alternative Approaches to Achieve Rule Objectives* discusses alternative approaches to a regulatory information request for CAFOs that may achieve similar outcomes (*i.e.*, ensuring that CAFOs are complying with their obligations under the CWA).

B. CWA Section 308 Data Collection and EPA's Approach Toward Collecting Facility-Specific Information From CAFOs Through Rulemaking

The proposed rulemaking utilizes EPA's authority under section 308 of the CWA, which authorizes EPA to collect information from point sources when necessary to carry out the objectives of the CWA. Since the 1970s, EPA routinely has used its authority under section 308 of the Act to collect information from large groups of point sources when developing and reviewing ELGs. An ELG survey typically will request industrial sources to provide information such as the type and amount of pollutants discharged, technologies available to treat waste streams, the performance capability of these technologies, and financial data. EPA uses this information to determine the appropriate control requirements and to assess the economic feasibility of such additional controls. As an

example, when reviewing the ELGs applicable to the steam electric industry, EPA determined that the data available at that time did not include all wastewater streams generated by the steam electric industry. To address this deficiency, EPA issued detailed questionnaires to the industry, which required the industry to respond to questions including contact information, facility address, pollutants in wastewater discharges, volume of discharges, and types and performance of technologies employed to treat the wastewater along with financial information. When developing ELGs for coal bed methane extractions, EPA conducted an industry survey to evaluate the volume of water produced from extraction; the management, storage, treatment and disposal options; and the environmental impacts of surface discharges. Information collection under the CWA, thus, has been a frequently used tool to develop appropriate and environmentally protective standards.

There is precedent for EPA using its section 308 authority to collect information from entities not currently required to obtain NPDES permits. Recently, EPA conducted surveys to gather information to help assess the impact of potential changes that the Agency is considering to its existing stormwater requirements. As part of this effort, EPA sent questionnaires to regulated Municipal Separate Storm Sewer System (MS4s), non-regulated MS4s, transportation MS4s, NPDES permitting authorities, and owners and operators of developed sites.

EPA can use a variety of methods to obtain data required by information collection requests under section 308. The most common method is to mail questionnaires directly to industry contacts. However, because EPA does not know the names and addresses of all CAFOs, mailing surveys to CAFOs is not possible; therefore, a rule is necessary to collect the information. The final **Federal Register** notice would contain the information collection request form (see the proposed form at the end of this preamble). Under Option 1, CAFOs would be required to respond to the request as issued in the **Federal Register** unless a state chooses to provide the information on behalf of a CAFO. Under Option 2, CAFOs in a focus watershed would be required to respond, but EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether requiring CAFOs to respond to a survey request is necessary. This request would be accomplished through a locally-applicable notice in the **Federal Register** along with other forms of local outreach. In the **Federal Register**, EPA also would include the description of the focus watershed and the reasons for its selection. To implement the rule effectively, EPA intends to conduct extensive outreach to the CAFO industry to ensure that all CAFOs know of the existence of this rule and any requirement to respond. The owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information under this proposed rulemaking.

The rulemaking process is an appropriate way to collect information from CAFOs because rulemaking is a transparent, equitable, and efficient method of collecting information from a large universe of entities. Moreover, allowing the states to submit the information required by this proposed action on behalf of a CAFO, included in the proposed option that would require all CAFOs to submit information, would allow states to collaborate with EPA in reducing the burden on some CAFOs to report the information to EPA. The proposed rule is a reasonable exercise of CWA section 308 authority because the information to be submitted would enable EPA to carry out and ensure compliance with the NPDES permitting program and other CWA requirements for CAFOs. *See, e.g. Natural Resources Def. Council, Inc.* v. *EPA*, 822 F.2d 104, 119 (DC Cir. 1987); *In re Simpson Paper Co. and Louisiana-Pacific Corp.*, 3 E.A.D. 541, 549 (1991).

EPA requests comment on obtaining the information through options in this co-proposed rulemaking or whether EPA should explore alternative approaches as described in the *Alternative Approaches to Achieve Rule Objectives* section of this preamble.

C. Option 1 Would Apply to All CAFOs

1. What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?

Proposed paragraph § 122.23(k)(2) specifies the information EPA would require respondents to provide to the Agency. Under this proposed option, EPA would require respondents to submit the following information:

(i) The legal name of the owner of the CAFO or an authorized representative, their mailing address, e-mail address (if available) and primary telephone number. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address.

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Proposed paragraph § 122.23(k)(2)(i) would require CAFOs to provide a point of contact for the CAFO. EPA proposes to allow CAFOs to provide contact information for either the owner of the CAFO or an authorized representative. An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO. For example, an employee who manages the CAFO or an attorney employed by the CAFO could be an appropriate authorized representative. Respondents would be required to provide complete contact information, including name, telephone number, e-mail (if available), and mailing address. Owners or authorized representatives may provide a P.O. Box in lieu of a street address in the contact information section. All individuals who qualify under 40 CFR. 122.22 can serve as a CAFO's authorized representative, including the operator of a CAFO. EPA proposes to allow qualifying individuals to serve as a CAFO's point of contact to preserve the privacy of a CAFO owner

if desired. With this information, EPA would be able to communicate directly with CAFOs when necessary. EPA seeks comment on whether an authorized representative should be permitted to sign the survey form instead of the CAFO owner or operator.

In addition to providing contact information, proposed paragraph § 122.23(k)(2)(ii) would require CAFOs to provide the location of the CAFO's production area in either latitude and longitude or by the street address of the CAFO's production area. (Note that a P.O. Box would not substitute for a street address in the location information section, since it would not identify a CAFO's location). EPA believes that knowing the location of the CAFO's production area, as specified in proposed paragraph § 122.23(k)(2)(ii), is essential for determining sources of water quality impairments and potential mitigation measures. A CAFO's proximity to waterbodies also is relevant to whether it may cause water quality impacts. Comprehensive compliance assistance and education and outreach efforts, which are facilitated by knowing facility location and contact information, are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

Information related to a CAFO's permit status (proposed paragraph § 122.23(k)(2)(iii)) would indicate whether additional information is publicly available, thus avoiding duplicative efforts to seek information from NPDES permitted CAFOs. Permitting status information also would show which CAFOs are operating without NPDES permit coverage. Even where a facility is not discharging and therefore is not required to be covered by a permit, knowing about the existence of these facilities gives EPA a basis for understanding how many facilities within each sector are actually able to completely prevent discharges. This information might be transferable to other facilities in that sector that currently discharge. EPA or states would be able to provide technical assistance, extend compliance assistance, or inspect such CAFOs where appropriate.

EPA proposes (as specified in proposed paragraph § 122.23(k)(2)(iv)) to collect data on the number and type (cattle, poultry, swine, *etc.*) of animals because the scale of the operation and the types of animals confined relate to the type and volume of manure generated and related environmental considerations, and also determine applicable CWA permitting requirements. Specifically, the number and type of animals provides an indication of the quantity and characteristics of the CAFOs' manure (*i.e.*, wet or dry and possible constituents), which then informs EPA as to the possible environmental effects of that manure. EPA also proposes to collect information about the amount of land available for application (proposed paragraph § 122.23(k)(2)(v)). A CAFO's available land application area is likely to affect the amount of manure that can be land applied for agronomic purposes and the potential amount of nutrients that could flow into surrounding waters of the United States. Combining information about manure quantity and characteristics with land available for application would indicate where issues might exist regarding excess manure.

Section 308(b)(1) of the CWA requires that information collected by the Agency shall be available to the public, except upon a satisfactory showing to the Administrator that any part of the information, report, or record is confidential business information. Under existing regulations, an owner or operator may assert a claim of confidential business information (CBI) with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. Under section 2.208, business information is entitled to confidential treatment if, "the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position." A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). *Id.* at § 2.203(c). EPA would follow all the requirements related to information submitted with a claim of confidentiality including the required notification to the submitter and rights of appeal available before releasing any information claimed to be confidential. EPA seeks comment on whether any information required by this proposed rule could reasonably be claimed as CBI and the reasons for making this claim.

EPA requests comment on the information that CAFOs would be required to submit as specified by proposed paragraph § 122.23(k)(2). Specifically, EPA is aware that providing latitude and longitude information might raise security or privacy concerns for CAFO owner/operators, many of whom are family farmers. EPA seeks comment on alternatives to submission of the latitude and longitude that would provide general information on a facility's location but not specific coordinates. For example, the survey could request the name of the nearest waterbody to the CAFO. Local knowledge, U.S. Geological Survey topographical maps or internet programs such as Google Maps could be used by the CAFO to make this determination of the nearest waterbody to the CAFO. This would allow EPA to identify the watershed in which a CAFO is located, and to potentially model discharges from the CAFO and their impacts on water quality, but without providing specific information that could be misused to target the CAFO for inappropriate or illegal purposes. EPA also seeks comment on using other systems such as the Public Land Survey System (PLSS) (*i.e.* township, range and county information) to identify the location of a CAFO's production area. The PLSS encompasses major portions of the land area of 30 southern and western United States. EPA seeks comment on other possible alternatives as well, such as requesting a business address and county where located, or some other general locational information. Commenters suggesting such alternative should discuss the advantages and limitations of such information both for protecting the security and privacy of CAFOs, and for fulfilling the CWA purposes for which EPA needs the data (discussed above). EPA also seeks comment on how this type of location information would compare with respect to operator burden, accuracy of location identification, and usefulness of the information to identify the production area location. EPA also seeks comment on whether CAFOs would know the operation's latitude and longitude.

Related to the concern discussed above is a concern that providing specific information on the type and number of animals at a CAFO might also raise potential security issues. EPA requests comment on allowing CAFOs to report numbers of animals confined in ranges, rather than providing specific numbers. One option would be to use ranges corresponding to the definitions of large, medium and small CAFOs. EPA also requests comment on collecting the information as specific numbers, but making it available to the public only as ranges.

Additionally, EPA requests comment on the most appropriate 12-month span of time for a CAFO to determine the number of animals at the CAFO (*i.e.* fiscal year or calendar year, or the previous 12 months prior to completing the survey).

EPA seeks comment on whether CAFOs would understand the questions asked and on the technical appropriateness of the questions. The

proposed survey form that EPA would use to collect the information is included as an appendix to this preamble.

The settlement agreement with the environmental petitioners specifies that EPA would release the information collected pursuant to this rule to the public, except where it is entitled to protection as confidential business information. This is required by section 308 of the CWA. However, neither the settlement agreement nor section 308 specify the venue or format in which the information is to be released. EPA is aware of both security and privacy concerns, referenced above, regarding the potential public release of the information to be collected by this rule. EPA requests comment on any such concerns, on appropriate ways to address those concerns (consistent with section 308), and on appropriate formats or venues to make it available to the public. EPA also requests comment on whether the requirement to make any information collected pursuant to section 308 available to the public (except confidential business information) should factor into its determination about what information, if any, to collect from CAFOs.

2. What information would EPA not require as part of the collection request survey for CAFOs?

In the settlement agreement with the environmental petitioners, arising out of litigation over the 2008 CAFO rule, EPA agreed to propose a rule that would require CAFOs to submit information on 14 items of information; or, if EPA decided not to include one of the items from the settlement agreement in the proposed rule, EPA would identify the item(s), explain why EPA chose not to propose requiring that information and request comment on the excluded items.

This proposed rulemaking requests information on only some of those 14 items because the Agency believes it can effectively obtain site-specific answers for the remaining questions directly from states, other Federal agencies, specific CAFOs, or other sources, when necessary. EPA also is striving to balance the need for information with the burden associated with providing the information to EPA.

EPA seeks comment on its proposal not to collect the following items specified in the settlement agreement:

- Name and address of owner/operator (if the name and address of an authorized representative is provided instead of the name and address of an owner or operator of the CAFO);
- The survey would allow the CAFO's a choice in providing location data of the production area either by the longitude and latitude or the street address of the production area, instead of requiring both;
- If contract operation, name and address of the integrator;
- Type and capacity of manure storage;
- Quantity of manure, process wastewater, and litter generated annually by the CAFO;
- If the CAFO land-applies, whether it implements a nutrient management plan for land application;
- If the CAFO land-applies, whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e);
- If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater; and
- Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure.

3. Who would be required to submit the information?

Under this option, proposed paragraph § 122.23(k)(1) would require all owners or operators of CAFOs to submit the information specified in proposed paragraph 40 CFR 122.23(k)(2). However, an exception is provided by proposed paragraph § 122.23(k)(5), that would allow states with an authorized NPDES program to provide the information proposed to be collected to EPA for CAFOs in the state. The option for a state to submit the information specified by proposed paragraph § 122.23(k)(2) is voluntary. This proposed option would allow states to submit the information because states may have collected all of the information required to be submitted by this proposed rule. A state may have obtained this information through permit applications, annual reports, inspection documentation, or other means and may keep records of this information in a form that is readily transferable to EPA. EPA does not have a preference regarding whether individual CAFOs submit the information or whether states submit it for them. EPA expects that states that do not possess the CAFO information requested would not choose to participate. In other words, EPA does not anticipate that states would submit the data, if it would require them to undertake additional efforts to collect this information from CAFOs. Proposed paragraph § 122.23(k)(2) provides flexibility to states by allowing each state to determine if it can easily submit the information to EPA given the state's resources.

Under proposed paragraph § 122.23(k)(5), in order to submit the information on behalf of its CAFOs, a state would only be allowed to provide information on behalf of a CAFO if it submits all items of information as specified by proposed paragraph § 122.23(k)(2). States that choose to submit this information would be required to use the Agency's information management system to ensure reporting consistency among states choosing to provide the information to EPA. CAFOs for which a state submits all of the required information would be referred to as "listed" CAFOs. States may submit information for CAFOs with NPDES permit coverage or CAFOs without NPDES permit coverage, such as CAFOs with state permits only.

In the case of states for which EPA is the NPDES permit authority and where the NDPES CAFO general or individual permits have been updated in accordance with the 2008 CAFO rule, EPA would provide the information as if it were the state. EPA issues updated NPDES CAFO permits in the states of Idaho, New Mexico, Oklahoma, New Hampshire, and Massachusetts.

The voluntary state submission option does not preclude any CAFO that wishes to do so from submitting the information required by the proposed rule even where a state previously submitted the information for that CAFO. The next section of this preamble, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?*, identifies the time frames for submitting the information to EPA that would be required by proposed paragraph § 122.23(k)(2).

Under this proposed option, EPA seeks comment on whether to allow the state submission option as proposed by paragraph § 122.23(k)(5), or whether all CAFOs should be individually required to submit information to EPA. Specifically, EPA solicits comment from CAFO owners or operators as to their willingness to have the state permitting agency submit operation information to EPA on their behalf. EPA also solicits comment from states on the availability of the information as specified by proposed paragraph § 122.23(k)(2); whether states plan to provide all the required information on behalf of CAFOs; and alternatively, if given the opportunity, whether states would provide partial information on behalf of CAFOs. EPA also solicits comments on whether NPDES authorized states

should be required to provide the information for their permitted CAFOs.

4. When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?

Following the release of the Agency's information management system and the availability of the proposed survey form, the proposed rule would allow an owner or operator of a CAFO or states to submit the information to EPA any time during their respective reporting periods. EPA proposes the following submission deadlines:

- *Required Reporting Period for States Who Chose to Report:* As specified by proposed paragraph § 122.23(k)(5)(iii), states that choose to submit information would be required to submit the information in proposed paragraph § 122.23(k)(2) [within 90 days from the effective date of the rule].
- *Notification Period:* [Within 60 days after the end of the state reporting period], EPA plans to make publicly available a list of all CAFOs by name, permit number, if applicable, and state ("listed CAFOs").
- *CAFO Reporting Period:* CAFOs that do not appear on the CAFO list would be required to submit the information on an individual facility basis to EPA within [90 days after the end of the notification period]. CAFOs that appear on the CAFO list may choose to review the information submitted by the state and override the state's submission by submitting its own information, but CAFOs must do so within [90 days after the end of the notification period].

Table 2 summarizes the timeframes for submitting the information as specified in proposed paragraph § 122.23(k)(2) to EPA.

TABLE 2—PROPOSED TIMELINES FOR SUBMITTING THE INFORMATION REQUIRED AS SPECIFIED BY PROPOSED PARAGRAPH § 122.23(k)(2)

Entity	Timeframe
States that choose to report	Must submit information within 90 days of the effective date of the rule.
EPA	Makes publicly available within 60 days of the end of the state reporting period a list of CAFOs for which the states have submitted data.
CAFOs not appearing on the CAFO list	Must submit information within 90 days of the end of the notification period.
CAFOs on the CAFO list that prefer to provide information themselves	May submit information within 90 days of the end of the notification period.

EPA requests comment on allowing 180 days rather than 90 days for states to submit information to EPA on behalf of CAFOs. This would allow additional time for unpermitted CAFOs wishing to be covered by NPDES permits to apply for permit coverage (*e.g.*, submit an NOI in the case of a general permit) such that states could submit the information for them.

To maintain an updated inventory, EPA proposes that CAFOs without NPDES permits submit the information specified by proposed paragraph § 122.23(k)(2) or update previously submitted information every ten years. EPA proposes a ten-year resubmission period for unpermitted CAFOs because the Agency does not expect the information to change significantly within this ten-year period. Specifically, proposed paragraph § 122.23(k)(4)(iii) would require CAFOs without NPDES permit coverage to submit or update the required information between [January 1 and June 1, 2022] and every tenth year thereafter between those dates. Operations that have NPDES permit coverage or obtain permits before the 2022 resubmission date, or that become CAFOs after [July 2012]—either newly defined, designated, or a new source—and obtain NPDES permit coverage would not be required to submit or update the required information. For example, a CAFO that does not have an NPDES permit as of [July 2012] but obtains NPDES permit coverage before January 1, 2022, would not be required to re-submit the information that today's rulemaking proposes to collect.

Under this proposed option, CAFOs with NPDES permits would not need to update their information every ten years because EPA believes it would be able to maintain an updated inventory for permitted CAFOs from their annual reports and permit applications when renewing permit coverage. EPA invites comments on the schedule for when states and CAFOs would be required to submit the information to EPA. EPA also seeks comment on the requirement for CAFOs without NPDES permit coverage to resubmit the information as specified in proposed paragraph § 122.23(k)(2) every ten years.

5. How would CAFOs submit the information to EPA?

Proposed paragraph § 122.23(k)(3) would require owners and operators of CAFOs to use an official survey form provided by EPA to submit, either electronically or by certified mail, the required information to EPA. EPA would not mail surveys to individual CAFOs to request information, as the locations of many CAFO operations are unknown. Rather, the survey form would be available on EPA's Web site or by requesting a hard copy from EPA Headquarters from the EPA contact information provided in the final rule. EPA would conduct extensive outreach with the regulated community, industry groups, environmental groups and states in its effort to notify all stakeholders about the requirements of the rule and how to submit the required information.

Proposed paragraph § 122.23(k)(3) would require the owner or operator of a CAFO to submit the survey form electronically using the Agency's information management system available on EPA's Web site. The Agency's Web-based information management system would be the most effective, inexpensive way to submit the information. The Web-based information management system would leverage components of the Central Data Exchange (CDX) on the Environmental Information Exchange Network. CDX provides a single and centralized point of access for states and CAFO owners or operators to submit information electronically to EPA. CDX is supported by the Cross-Media Electronic Reporting Regulation (CROMERR), which provides the legal framework for electronic reporting under EPA's regulations. CROMERR requires any entity that submits electronic documents directly to EPA to use CDX or an alternative system designated by the Administrator. CDX would ensure the legal dependability of electronically submitted documents and provide a secure environment for data exchange

that would also protect personally identifiable information (PII).

The supporting CAFO information management system would leverage Agency standards and enterprise technologies to perform logic checks on the data entered to ensure quality assurance and quality control. Logic checks would reduce the reporting errors and limit the time involved in investigating, checking and correcting submission errors at all levels. While not required, the CAFO owner or operator would be able to print a copy of the information submitted through the Agency's information management system to maintain on site or at a nearby location.

EPA proposes an option to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. A CAFO owner or operator would be allowed to request a waiver from this electronic reporting requirement at the time of submission and would not need to obtain approval from EPA before submitting a hard copy of the form. If submitting a hard copy of the survey form, the CAFO owner or operator would be required to check the electronic submission waiver box and explain why electronic submission causes an undue burden on page 1 of the proposed survey form. EPA requests comment on whether it should allow CAFOs to submit a hard copy of the form without requesting a waiver.

CAFOs completing a hard copy of the survey form would submit the information in proposed paragraph § 122.23(k)(2) to EPA via certified mail. The official paper survey form is attached as an appendix to this preamble. There are two ways that a CAFO owner or operator who cannot submit the information electronically would be able to access the official paper survey form and instruction sheet, which are included as Attachment A of this preamble. First, the owner or operator would be able to request a form and instructions from EPA. A form may be requested from EPA Headquarters from the EPA contact information provided in the final rule. Alternatively, the owner or operator would be able to download the form and instructions, which would be available at *http://www.epa.gov/npdes/afo/*. After receiving the official form, the CAFO owner or operator would complete and return the survey form to EPA using certified mail postmarked by the appropriate deadline specified by proposed paragraph § 122.23(k)(4).

EPA plans to coordinate with states, tribal governments, and interested stakeholders to notify CAFOs about the proposed official survey form and the availability of the Agency's information management system. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(3). EPA also seeks comment on the most effective ways to notify CAFOs, when the rule is finalized, that they must submit the information required as specified by proposed paragraph § 122.23(k)(2).

6. How would states submit the Information to EPA?

Only states with an authorized NPDES program would have the option to submit the information on behalf of CAFOs within their states. EPA requests comment on this limitation. In states where EPA is the permitting authority for CAFOs, EPA would submit the information. To participate in the voluntary submission option provided by proposed paragraph § 122.23(k)(5), states would electronically submit the information required by proposed paragraph § 122.23(k)(2) using the Agency's information management system. The electronic submission process for states is similar to the electronic submission process for CAFOs. The electronic submission process would entail submitting information via the information management system through CDX. Proposed paragraph § 122.23(k)(5)(ii) would limit states to providing only current data, including data obtain from the state's most recent application process or from a CAFO's most recent annual report. Because states choose whether to submit information on behalf of CAFOs, EPA anticipates that a state would submit the information only when electronic submission is not overly burdensome.

To clearly identify which CAFOs would not need to submit the information to EPA during the CAFO reporting period, EPA proposes to make available on the Agency's Web site (*http://www.epa.gov/npdes/*) a final list of CAFOs for which the states have submitted information on behalf of a CAFO. The CAFOs would be listed by name, location and permit number for NPDES permitted CAFOs, and by name and location for unpermitted CAFOs. EPA would also make available the information provided by the states for each CAFO [within 60 days after the end of the 90-day state submission timeframe]. As explained in the section, *When would states that choose to submit the information be allowed to provide the information to EPA and when would CAFOs be required to submit the information to EPA?*, of this preamble, CAFOs that do not appear on the CAFO list would be required to submit the information [within 90 days of the list and responses being published]. CAFOs on the CAFO list would not be required to submit the information; however, they would be able review and change any information provided by a state.

States would be required to provide the electronic data files in an Extensible Markup Language (XML) format that is prescribed by EPA and compatible with Agency standards in support of regulatory data and information flows by the deadline specified in proposed paragraph § 122.23(k)(5)(iii). If states already store CAFO information within their respective databases, states would need to map their CAFO database elements to the prescribed XML CAFO schema for data exchange. States that do not store CAFO information electronically or maintain records in hardcopy would need to manually populate the CAFO survey using the Web-based submission form, thus using the same submission process as an individual CAFO owner or operator.

In contrast to implementing and enforcing the existing CAFO regulations in 40 CFR part 122, which is a required program element for authorized states, EPA emphasizes that the state submission option would be voluntary. This proposed option would not require that states divert resources from regulatory implementation and enforcement efforts to submit the information required by proposed paragraph § 122.23(k)(2) to EPA. EPA anticipates that states that choose to report on behalf of their state's CAFOs would already possess this information and therefore, would not need to undertake additional efforts to collect this information from CAFOs. EPA assumes the states that choose to provide the information to EPA would be the states for which this task would not be overly burdensome. This proposed option does not express a preference as to whether states or CAFOs submit the information. EPA plans to coordinate with states to help them prepare to submit the information if the state chooses to provide the information to EPA. EPA seeks comment on the proposed data collection approach regarding the way in which states would submit the information to EPA on behalf of CAFOs, and on whether NPDES authorized states should be required to submit the information on behalf of permitted CAFOs.

D. Option 2 Would Apply to CAFOs in a Focus Watershed

EPA also proposes an option that would first identify focus watersheds with water quality problems likely attributable to CAFOs, and then potentially identify CAFOs in a focus watershed to respond to a survey request. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. This proposed rulemaking option would allow EPA to list the criteria used to define the focus watersheds, specify the methods to determine the geographic scope of the focus watersheds, survey groups of CAFOs in the selected focus watersheds if the necessary information was not available from other sources, and define the amount of time required for outreach so that CAFOs in these focus watersheds know if and when they are required to respond to a survey request.

Under this proposed option, EPA would focus on collecting information regarding CAFOs in focus watersheds where there are water quality concerns likely associated with CAFOs. EPA would use existing data sources to determine which geographic areas would be identified as a focus watershed for collecting information about CAFOs and to attempt to obtain the necessary data before using its 308 authority to collect it directly from CAFOs.

EPA could use existing data sources to identify areas of water quality concern that correspond with locations of CAFOs. For example, modeling estimates could be used to identify watersheds at an appropriate Hydrologic Unit Codes (HUCs) level with high nitrogen and phosphorus loadings likely originating from agricultural sources. Publicly available data could also be used to identify watersheds with high concentrations of CAFOs. Data from these sources could be further complemented by numerous other existing data from EPA, states, universities, research centers and other sources. EPA would collaborate with states, other Federal agencies, and interested stakeholders to identify other available sources of data pertaining to CAFOs and water quality, including but not limited to watershed characteristics, sources of water quality impairments, pollutant loadings from agriculture, CAFO locations, characteristics of CAFO operations, and CAFO manure management practices when selecting focus watersheds. EPA would make its methodology for identifying focus watersheds and the results of its assessments available to the public.

EPA, other Federal, state, and local agencies, and interested stakeholders could also use the collected information to target their outreach to CAFO owners and operators, target technical and financial assistance that helps CAFOs apply the most effective manure management practices, and implement monitoring and assessments of the effects of these practices. Leveraging stakeholder resources and more precisely focusing on areas of concern could yield strong results in a shorter period.

Identifying focus watersheds could produce additional benefits in addressing water quality impairments. In focus watersheds, Federal and state agencies could partner with industry groups and non-governmental organizations to increase outreach and education to CAFO owners and operators. Additionally, this option could assist EPA and other Federal and state agencies in working with agricultural producers in the focus watershed to develop and implement a coordinated program of manure management practices needed to attain water quality goals, including state water quality standards. EPA could also evaluate results from existing or future water quality monitoring and modeling and provide these results to the public periodically. Such education and outreach efforts could promote the implementation of best management practices. Interested stakeholders could use information collected by this proposed option to target delivery of its technical and financial assistance including conservation systems tailored to the water quality needs and resource profile of each livestock producer.

With this proposed rulemaking option, EPA would collect the information specified in proposed paragraph § 122.23(k)(3) only from CAFOs located in identified focus watersheds. EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. EPA seeks comment on this proposed option that would require CAFOs in focus watersheds to report the information specified in proposed paragraph § 122.23(k)(4) if it were not otherwise available.

1. How would EPA identify a focus watershed?

EPA would identify focus watersheds based on water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity), and organic enrichment (low dissolved oxygen). EPA also recognizes that there is a variety of sources, including sewage treatment plants, and industrial discharges that are sources of nutrients and sediment related to water quality impairments. However, for purposes of this survey, this proposed option would require that a focus watershed be one associated with water quality concerns likely to be associated with CAFOs or land application of manure.

Under section 303(d) of the CWA, states are required to assess their waters and list as impaired those that do not meet water quality standards. The 303(d) impairment listings would be one source to consult in identifying a focus watershed based on water quality concerns. EPA's ATTAINS database, which includes listings of impaired waters reported to EPA by states, pursuant to CWA section 303(d), is available to help identify impacted watersheds.

However, relying on impaired waterbody information is limited because many waterbodies have not been assessed or the impairment cause has not been identified. Additionally, in these impaired waterbodies some states have not established water quality standards for all of the pollutants in these impaired waterbodies that might be associated with CAFO discharges. In particular, many states have not set standards for nutrients, which are a key indicator for animal agriculture's impact on water quality. To address this limitation, EPA also could use other data indicating water quality concerns relating to CAFOs, such as nutrient monitoring data from state or Federal agencies. EPA solicits comment on what sources of data could be used to determine where waterbodies are likely to be impacted due to CAFOs.

EPA also could rely on existing partnerships to identify waterbodies with impacts associated with CAFOs. For example, a March, 2011 memorandum reaffirmed EPA's commitment to partnering with states and collaborating with stakeholders to make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to the nation's waters. In addition, some states are working on strategies for reducing nitrogen and

phosphorus pollution. U.S. EPA Memorandum, Working Effectively in Partnership with States to Address Phosphorus and Nitrogen Pollution Through Use of a Framework for State Nutrient Reductions (2011), available at *http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/memo_nitrogen_framework.pdf*. The information collected by today's proposed rulemaking could assist states as they identify areas with water quality concerns by providing data for their strategy development and implementation. EPA requests comments on sources of information that could be used to identify watersheds with a likelihood of water quality impacts associated with CAFOs.

In addition to being areas where water quality issues of concern are likely to exist due to CAFOs, a focus watershed would be identified based on one or more of the additional following proposed criteria:

a. High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supply, watersheds with high recreational value, or outstanding natural resources waters (Tier 3 waters);

b. Vulnerable soil types;

c. High density of animal agriculture; and/or

d. Other relevant information (such as an area with minority, indigenous, or low-income populations).

EPA solicits comment on whether minimum standards for selection of a focus watershed should be adopted and what such standards might be. EPA also solicits comment on whether the results of a focus watershed assessment, including decisions to focus or not to focus on an area, should be made available to the public. EPA also solicits comment on how frequently EPA should review and/or revise its identification of focus watersheds.

2. Considerations When Determining Whether a Focus Watershed Meets the Criteria for Water Quality Protection

a. High Priority Watershed Due to Other Factors (Such as Vulnerable Ecosystems, Drinking Water Supply Source, Watersheds With High Recreational Value or Outstanding National Resource Waters (Tier 3 Waters))

EPA could identify focus watersheds where waters require a greater degree of protection than other waters of the United States. These include waters with excellent water quality, including high quality waters, where water quality conditions must be maintained and protected in accordance with 40 CFR 131.12(a)(2) and outstanding national resource waters, where the waters have exceptional recreational, environmental or economic significance and must be protected in accordance with 40 CFR 131.12(a)(3). Areas near drinking water sources may also be areas identified for survey requests. EPA and its partners would work with CAFOs located within these watersheds in order to promote improved nutrient management practices and to ensure that the applicable CWA requirements are met. EPA would review state and tribal water quality standard data to locate these watersheds. EPA seeks comment on high priority watershed due to other factors as a criterion to identify a focus watershed.

b. Vulnerable Soil Types

Vulnerable soil types include soils with high nutrient levels. High nutrient soils in a watershed indicate that there may be more nutrients being land applied than being utilized by the crops. For example, there is an increased risk of phosphorus runoff in areas where phosphorus soil test levels are high, particularly in areas that are close to surface waters or have steep slopes. To evaluate and determine which watersheds have soils with high nutrient levels, EPA could review reports on nutrient levels such as the Mid-Atlantic Watershed Program's report of phosphorus; reports prepared for Congress, such as *Animal Waste Management and the Environment: Background for Current Issues and Animal Waste Pollution in America: An Emerging National Problem*. U.S. Congressional Research Service, CRS–98–451 (1998) available as of September 2011 at *http://www.cnie.org/nle/CRSreports/Agriculture/ag-48.cfm*; Tom Harkin, *Animal Waste Pollution in America: An Emerging National Problem*, Report Compiled by the Minority Staff of the United States Senate Committee on Agriculture, Nutrition, & Forestry for Senator Tom Harkin (Dec. 1997). Data compiled by state conservation districts and data from land grant universities that evaluate the nutrient levels of soils also could be sources of information to support identifying a focus watershed because of high nutrient levels in the soil. In addition to soil nutrient level, estimating areas where manure production is more than the surrounding crop lands can utilize may also be an indicator to focus information collection requests. For example, where the amount of manure generated greatly exceeds the capacity of available land for agronomic application of manure, it is more likely that CAFOs will apply manure in excess of crop nutrient requirements or experience issues associated with inadequate storage capacity. EPA seeks comment on vulnerable soil types as a criterion to identify a focus watershed.

c. High Density of Animal Agriculture

EPA could target outreach and information collection efforts to those geographic regions where Ag Census data, which is publicly available aggregate data, shows a high density of animals or reports a high number of operations that meet the CAFO animal size thresholds as specified by paragraph 40 CFR 122.23(b). EPA could review the aggregate data from the Ag Census to determine counties, geographic regions or sub-regions that have a high density of CAFOs. This type of census data is accessible to both EPA and the public through USDA's existing on-line report generating function and other sources. EPA seeks comment on using high densities of CAFOs as a criterion to identify a focus watershed.

d. Other Relevant Information

EPA anticipates cases in which a need to collect information from CAFOs could arise because of factors other than the three criteria described above. For example, CAFOs often are located in minority, low-income, and indigenous communities that are or may be disproportionately impacted by environmental pollution. Supporting this statement is a report from The Lawyers' Committee for Civil Rights Under Law stated that "there are 19 times more CAFOs in North Carolina's poorest communities than in wealthier communities and five times more in nonwhite neighborhoods than in white neighborhoods." (Daria E Neal *et al. Now is the Time: Environmental Injustice in the U.S. and Recommendations for Eliminating Disparities*, page 56 (2010) available as of July 2011 at *http://www.lawyerscommittee.org/admin/site/documents/files/Final-Environmental-Justice-Report-6-9-10.pdf*). Working with CAFOs in those communities to address water quality problems would help fulfill the Agency's environmental justice goals. EPA seeks comment on the factors listed above and seeks suggestions of other factors the Agency could use as a criteria to identify a focus watershed. EPA would consider other factors suggested for inclusion in taking final action on this proposal.

3. How would EPA identify CAFOs from which additional information is needed?

After establishing an area with a water quality impairment or water quality concerns likely associated with CAFOs, or otherwise identified as a focus watershed based on the factors identified above, EPA would make every reasonable effort to assess the utility of existing publicly available data and programs to identify CAFOs by working with partners at the Federal, state, and local level before determining whether an information collection request is necessary. However, where EPA was unable to obtain the necessary basic information from such sources, EPA would require CAFOs in the focus watershed to provide the necessary information. EPA requests comment on alternative sources of information that could be used to gather the necessary information.

4. What information would EPA require as part of an information gathering survey for CAFOs in a focus watershed?

Under this proposed option, EPA would seek to collect the same information as under the proposed option for using section 308 to collect information from all CAFOs, outlined in section III.(C)(2). Specifically, EPA might require CAFOs in a focus watershed to submit the following information as specified by proposed paragraph § 122.23(k)(4), if the information were not available from other sources:

(i) The legal name of the owner of the CAFO or an authorized representative,[1] their mailing address, e-mail address (if available) and primary telephone number;

(ii) The location of the CAFO's production area identified by the latitude and longitude or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered area, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter, and process wastewater, the total number of acres under the control of the owner or operator available for land application.

Under this proposed option as well as the other proposed option, CAFOs in a targeted area would be able to assert a claim of confidential business information with respect to specific information submitted to EPA. 40 CFR part 2, subpart B. A claim of confidentiality must be made at the time of submission and in accordance with the requirements of 40 CFR 2.203(b). For further discussion of CBI, see section, *What information would EPA require as part of an information gathering survey for CAFOs and why is EPA proposing to require this information?*, of this preamble.

5. How would EPA geographically define a focus watershed?

If EPA did ultimately need to use section 308 to focus on CAFOs in a specific geographic area, that area must be defined in some way so that CAFOs would know if their operation is located within the area, and thus, would be required to respond to the survey request. EPA proposes to define the targeted areas geographically by either Zip Codes, counties, HUC codes, or watersheds. EPA solicits comment on the most effective way to define a focus watershed so that CAFOs would know of their need to respond to EPA.

6. How would EPA inform CAFOs of their responsibility if they were required to respond to an information request?

Where certain areas or groups of CAFOs are required to respond to an information collection request, EPA would conduct a variety of informational outreach efforts. First, EPA would publish in the **Federal Register** a notice describing the boundaries of the targeted area(s) and the information submission requirements for CAFOs within those areas at least [30] days before the beginning of any information submission period. EPA would also conduct extensive outreach with the regulated community and interested stakeholders to notify CAFOs in the focus watershed of their responsibility to provide information. EPA would work with the state and local authorities in providing this outreach. For example, EPA might hold public meetings in the area, place notices in newspapers, and use other available local media. EPA notes that the owners or operators of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO would not be required to submit information as specified in proposed paragraph § 122.23(k)(4) to EPA.

Under proposed paragraph § 122.23(k)(3), EPA would conduct outreach to CAFOs in the targeted area for at least [30 days] prior to the start of any reporting period to notify operations that they are required to report the information specified in proposed paragraph § 122.23(k)(4) to EPA. EPA seeks comment on ways to inform and reach CAFOs in targeted areas if they are required to provide information. EPA also seeks comment on the timeframe provided for outreach to CAFOs in targeted areas.

7. When would CAFOs in a focus watershed be required to submit the information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, after the end of EPA's outreach period for CAFOs in the targeted area, CAFOs would have [90 days] to submit the information to EPA. EPA would identify the specific deadline for submitting the information during EPA's outreach period as well as by publishing the deadline in the **Federal Register** notice, which is required at least [30] days before the beginning of any information submission period.

EPA seeks comment on the amount of time a CAFO in a targeted area would need to submit the information to EPA.

8. How would CAFOs in a focus watershed submit information to EPA?

If EPA needed to use 308 authority to collect information from CAFOs, CAFOs in focus watersheds would submit the information in the same manner as specified in proposed option 1 for collecting information from all CAFOs. Specifically, proposed paragraph § 122.23(k)(5) would require the owner or operator of a CAFO to submit the official survey form electronically using the Agency's information management system available on EPA's Web site. EPA proposes to waive the electronic submission requirement if the information management system is otherwise unavailable or the use of the Agency's information management system would cause undue burden or expense over the use of a paper survey form. See section *How would CAFOs*

[1] An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA or the state about the CAFO.

submit the information to EPA of this preamble for a detailed discussion. EPA seeks comment on the data submission approach in proposed paragraph § 122.23(k)(5).

E. Failure To Provide the Information as Required by This Proposed Rulemaking

Under Option 1, and under Option 2 in cases where EPA used its section 308 authority to collect information from CAFOs in focus watersheds, CAFO owners or operators that failed to submit the information in accordance with the requirements specified in proposed paragraph § 122.23(k) would be in violation of the CWA. Section 309 of the CWA provides for administrative, civil and criminal penalties for violations of section 308 of the Act. 33 U.S.C. 1319. EPA assesses monetary penalties associated with civil noncompliance using a national approach as outlined by the Agency's general penalty policy. More information on the amounts and calculations of civil penalties is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/*. Additional information on criminal noncompliance, is available at *http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/*.

F. Alternative Approaches To Achieve Rule Objectives

The objective of this proposed action is to improve and protect water quality impacted by CAFOs. However, EPA recognizes that there may be other ways to achieve this objective, and the Agency solicits comment on alternative approaches to meet the objectives of this proposed rule. Such alternative approaches may require rulemaking. EPA would consider any such suggested alternative approaches in developing the final rule.

EPA describes three such alternative approaches in this section and seeks public comment on these approaches. EPA seeks public comment on alternative approaches to a data collection request for CAFOs including: (1) An approach that would obtain data from existing data sources, (2) an approach that would expand EPA's network of compliance assistance and outreach tools and (3) an approach requiring NPDES authorized states to submit the information as specified by proposed paragraph § 122.23(k)(2) to EPA, which would require rulemaking. EPA also seeks comment on other alternative approaches besides the three discussed herein that could achieve the same objectives. Any one of these three alternative approaches could be enhanced by stewardship and recognition programs, education or assistance programs or incentive based programs, carried out in coordination with other partners such as states, industry or USDA, and could result in improvements in industry practices more quickly than a data collection effort. EPA solicits comment on programs such as these that could be employed to ensure that CAFOs are implementing measures to protect water quality.

1. Use of Existing Data Sources

One alternative approach to the proposed rule would be to rely on the use of available existing sources of data on CAFOs, such as information from USDA, states, environmental organizations and other interested stakeholder groups. The discussion below describes the sources of information that currently exist, identifies some of the limitations EPA faces in using these sources and seeks comment on ways in which EPA could leverage these sources collectively to address impacts from CAFOs.

a. U.S. Department of Agriculture Data

The U.S. Department of Agriculture is a leading source of national, publicly aggregated agricultural data. Federal law prohibits USDA from disclosing or using data collected unless the information has been converted into a statistical or aggregate form that does not allow the identification of the person who supplied particular information 7 U.S.C. 2276(a); *see also* 7 U.S.C. 8791(b)(2)(A); Confidential Information Protection and Statistical Efficiency Act, 44 U.S.C. 3501(2002). Accordingly, USDA withholds any county-level data if that information would identify individual producers. In counties where no data are available, the USDA indicates where data is omitted because of disclosure limitations or because no CAFOs are in operation.

EPA currently uses the publicly available aggregate data from USDA categorized by animal size thresholds defined by the CAFO rule to refine estimates of the CAFO universe, assess animal densities by counties, and identify the number of operations in those counties. EPA also can determine from the USDA aggregate data the cumulative number of acres that are available for land application at CAFOs, as the total number of acres by county but not by facility. To obtain facility-specific data, EPA is considering ways in which the Agency could combine the publicly available, aggregated data from USDA with other data sources to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

b. State Permitting Programs

State NPDES permitting programs should have data on permitted CAFOs, which could provide answers to the proposed survey questions in today's notice. EPA estimates that approximately 8,000 CAFOs out of a total universe of 20,000 CAFOs have obtained permit coverage under the NPDES program. Authorized states have information from permit applications and annual reports for CAFOs with permit coverage. Although not all states have made this information electronically accessible, some states have online databases or maps that display CAFO data. For example, Missouri requires permit coverage for all CAFOs as well as a subset of operations with less than 1,000 animal units and displays a map of these operations in relation to waters of the state (*http://www.dnr.mo.gov/env/wpp/afo.htm*). Missouri Department of Natural Resources uses this information to link permitted operations with specific classified stream segments in order to facilitate water quality based planning, total maximum daily load (TMDL) development and reports required under section 305(b) of the CWA. Similarly, in North Carolina all animal feeding operations with a permit, whether under the NPDES program or under other state permitting programs, are listed in a spreadsheet that can be downloaded (*http://portal.ncdenr.org/web/wq/aps/afo/perm*). The spreadsheet contains information on the number of animals at the operation, type of permit issued to an operation and latitude and longitude information for 2,711 operations.

While those two states are examples of comprehensive sources of information that are electronically available, other states maintain CAFO records in paper copy, which may not be complete or readily available. In addition, information on unpermitted CAFOs generally is not available via state records. Currently, EPA provides registered users, such as states, the ability to track permit issuance, permit limits and monitoring data through the Integrated Compliance Information System (ICIS) or through the Online Tracking Information System (OTIS), which integrates ICIS data with information from other databases such as EPA's Permit Compliance System (PCS). EPA estimates that only 15 to 20 percent of CAFO permit data is stored in one of these two systems because many states use separate databases to manage and implement permitting programs. A further challenge in

aggregating state permitting data is that the information collected is not based on a national standardized reporting scheme. Reporting inconsistencies across jurisdictions would prevent EPA from compiling a consistent national summary of CAFO information. Thus, a national inventory based solely on state data would not be comprehensive.

EPA solicits comment on ways in which data from state permitting authorities could be used in conjunction with other sources of information, such as the publicly available aggregate data from USDA, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

c. State Registration or Licensing Programs

Permitting programs administered by the state are not the sole source of state information on CAFOs. Many state agriculture departments have registration or licensing programs that collect information from livestock farms separately from environmental permitting requirements. Such sources could be used as a source of information for the unpermitted universe. However, EPA's investigation of those data sources indicates that registration or licensing programs typically provide only contact information.

Despite the limited information available from registration and licensing programs, these sources may nevertheless provide a comprehensive list of facilities in a particular sector, which EPA could use to supplement information available from a state permitting program. For example, in Arkansas, state law requires poultry operations confining 2,500 or more birds on any given day to register with the county conservation districts. Information that could be obtained from this registration list includes: Number and kind of poultry housed; location of the operation; litter management system used and its capacity; acreage controlled by the operation; litter land applied during the last year; amount and destination of litter transferred; amount of litter utilized by the producer and the type of utilization; and the name of the poultry operation's processor.

Similarly, dairy licensing programs contain site-specific information, which may be publicly available. For example, the Ohio Department of Agriculture requires milk producers of grade A and manufactured milk to obtain a license prior to operation. As part of this process, a milk producer must provide evidence of a safe water supply and submit prepared plans for the milkhouses, milking barns, stables and parlors at the operation. Ohio Department of Agriculture provides a list by county of the number of active dairy farms in the state (*http://www.agri.ohio.gov/apps/DairyFarmsReport/FarmsReportPage.aspx*). This information could be used in conjunction with the USDA's publicly available aggregate data to determine CAFO locations by county in Ohio.

EPA seeks comment on the availability of registration and licensing lists and whether information obtained from such programs could be shared with EPA. If so, such data could also be used as part of a comprehensive effort to address CAFO impact on water quality. EPA seeks input on ways in which data from these lists could be used in conjunction with other sources of information, such as USDA's publicly available aggregated data, to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

d. Satellite Imagery and Aerial Photographs

EPA, states, and academic institutions have used satellite imagery to locate and map CAFOs. For example, through a cooperative agreement with EPA, Jacksonville State University and Friends of Rural Alabama (JSU and FRA) created the American Environmental Geographic Information System (*http://www.aegis.jsu.edu/*) to assist in watershed analyses and planning. This system provides maps and environmental data for a variety of industries, including animal feeding operations, in a select number of eastern states. JSU and FRA visually scanned satellite images for structures commonly used to confine animals. Clusters of long, white buildings were identified as poultry operations or as swine operations, when an open-air pit or lagoon system was visible.

EPA also has used aerial flyovers to obtain real time aerial photography for a variety of purposes, including identifying and updating the universe of CAFOs, identifying potential illegal discharges from CAFOs to waters of the United States, and prioritizing follow-up site inspections. While resource intensive, flyovers can be used to cover specific geographic areas and/or areas with difficult terrain.

These methodologies present certain limitations as a source of data on CAFOs. While satellite imagery and aerial photographs may identify location information for some animal feeding operations, a user may not be able to determine whether structures actually contained animals, whether an operation met the regulatory definition of a CAFO or had NPDES permit coverage. Therefore, this information source is most useful when supplemented by on-the-ground efforts to confirm site-specific information. For example, location information from aerial photography or satellite images may be combined with state and county Web sites that provide tax parcel information, building histories and permit histories, so as to identify animal feeding operations that may meet the CAFO requirements for obtaining a permit. EPA solicits comment on other ways to augment information from satellite images and aerial photography location information to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

e. Reporting Requirements Under Other Programs

EPA's Assessment, TMDL Tracking and Implementation System (ATTAINS) database (*http://www.epa.gov/waters/ir*) displays water quality findings reported by the states under section 305(b) and section 303(d) of the Clean Water Act. These findings represent state decisions as to whether assessed waters are meeting their water quality standards. Assessment decisions are made by the states based primarily on monitoring targeted to areas known or suspected to be impaired and may not fully represent all conditions within a state. While not all waters are assessed, the database identifies which watersheds are impaired. The findings are updated in the database as new state Integrated Reports (305b and 303d) are received, reviewed and posted and may reflect 2010, 2008, or 2006 data from states, depending on their latest submission. EPA seeks comment on ways in which impairment information from this source can be compared to CAFO data, such as animal density or number of operations, to inform efforts to address water quality impacts from CAFOs.

Although on a separate track from this proposed rule, EPA is currently in the process of developing a rulemaking to amend reporting requirements for livestock operations on air emissions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 103 and (Emergency Planning & Community Right-to-Know Act) EPCRA section 304. This information collection effort may offer an alternative means of collecting data on livestock operations that would meet the Agency's Clean Water Act needs. As the Agency moves forward with the CERCLA/EPCRA reporting requirements

proposed rulemaking, there is an opportunity to explore how to leverage reporting to EPA from livestock operations to meet information needs under CERCLA/EPCRA and the CWA simultaneously. EPA solicits comment on ways in which this could be achieved to obtain a comprehensive, consistent national inventory of CAFOs to assess and address their impacts on water quality.

f. Other Sources of Data

Nongovernmental entities have published reports on CAFOs, such as the Food & Water Watch Report—*Factory Farm Nation: How American Turned Its Livestock Farms into Factories* and the Pew Commission report—*Putting Meat on the Table: Industrial Farm Animal Production in America.* These reports provide helpful background information and case studies. EPA currently uses the results of these studies to identify research needs but solicits comments on how such reports could enhance additional EPA efforts to reduce water quality impairments from CAFOs.

Extension agents and conservation programs also have information on CAFOs. EPA solicits comment on how the Agency could work with state cooperative extension programs, land grant universities and other conservation programs to gather information on CAFOs and to coordinate efforts to protect water quality. In general, these sources only release aggregated data and may not specifically focus on operations that meet EPA's definition of a CAFO.

In summary, through this alternative approach, EPA could combine a variety of existing data sources to determine where CAFOs are located and overlay this information with existing data on impaired waterbodies to determine where regulatory activities should be focused. While existing data sources are not consistent and are not comprehensive nationwide, the Agency seeks comment on how these sources, as well as additional sources not described herein, could be used collectively to protect water quality from CAFO discharges rather than promulgating a survey requirement for all CAFOs to provide information.

2. Alternative Mechanisms for Promoting Environmental Stewardship and Compliance

Under this alternative approach, EPA would expand its network of compliance assistance, outreach tools and partnerships with industry to assist in addressing the most significant water quality problems. Comprehensive compliance assistance and outreach efforts are tools a regulatory program can use in partnerships with industry to proactively protect and maintain water quality.

EPA recognizes that stewardship and recognition programs, education or technical assistance programs and incentive based programs, often carried out in coordination with other partners such as states, industry, or USDA, could result in improvements in industry practices more quickly than a data collection effort. Two current examples of such programs are: (1) The Ag Center, (*http://www.epa.gov/agriculture*), which provides compliance and environmental stewardship information related to animal feeding operations and partners with USDA and state land grant universities to promote environmental stewardship and improve manure and nutrient management practices; and (2) EPA's partnership with USDA's extension program, offering a wide range of compliance and environmental stewardship information for livestock operators through the Livestock and Poultry Environmental Learning Center available at *http://www.extension.org/animal_manure_management.* EPA solicits comment on how best to use alternative mechanisms such as these to ensure CAFOs are implementing measures to protect water quality. This approach would not require a rulemaking; rather it would focus on the use of activities that already are authorized under existing regulations. The success of such efforts would depend in large part on coordination with EPA's state partners and the cooperation and assistance of industry and environmental groups.

3. Require Authorized States To Submit CAFO Information From Their CAFO Regulatory Programs and Only Collect Information From CAFOs if a State Does Not Report

This alternative regulatory approach, is a variation of the proposed approach and would require NPDES authorized state regulatory agencies to submit the information proposed by paragraph § 122.23(k)(2). Many states may know the universe of CAFOs in their state to ensure proper implementation and enforcement of the CWA's permitting requirements and to protect water quality.

Although EPA recognizes that states may not have information on all CAFOs in their state, this alternative approach would require states to provide information for CAFOs for which they do have information as part of their CAFO regulatory programs. As a result, the data EPA would collect would not necessarily be comprehensive. Under this approach, EPA would only require information from CAFOs where a state failed to provide the required information to EPA.

It is likely that a number of states already have the information that would be required by proposed paragraph § 122.23(k)(2) for NPDES permitted CAFOs. Some states require CAFOs that have not sought coverage under an NPDES permit to obtain a separate state permit. For example, Maryland requires CAFOs that discharge to obtain NPDES CAFO permits and CAFOs that do not discharge to obtain state Maryland Animal Feeding Operation (MAFO) permits. Other states may have access to other data sources for CAFOs that could be used to provide the information.

Under this alternative approach, each state would be required to report the information to EPA. States would be required to submit the information within a given timeframe, and EPA would compile that information into a database. CAFOs would be required to provide whatever information a state fails to provide.

EPA seeks comment on whether authorized states should be required to provide information from their CAFO regulatory programs on behalf of the CAFOs within their boundaries. EPA also seeks comment on whether it should allow states to submit data from CAFO from sources other than a state regulatory program. EPA also seeks comment on, if it selects this alternative, whether EPA should allow or require CAFOs to review the information in the database.

IV. Impact Analysis

A. Benefits and Costs Overview

When EPA issued the revised CAFO regulations on February 12, 2003, it estimated annual pollutant reductions due to the revisions at 56 million pounds of phosphorus, 110 million pounds of nitrogen and two billion pounds of sediment. This proposed rulemaking would not alter the benefits calculated in the 2003 rule. The effect of the proposed rule would be to enable full attainment of the benefits calculated in the 2003 rule by furnishing EPA with information on the universe of CAFOs. To date, EPA estimates that approximately 58 percent of CAFOs do not have NPDES permits. The information collected under this proposal would help ensure that CAFOs that discharge have NPDES permit coverage necessary to achieve these environmental benefits.

The proposed rulemaking would not alter any permitting requirements or the

technical requirements under the Effluent Limitations Guidelines and Standards (ELGs), so CAFOs would not incur any compliance costs associated with modifications to structures or operational practices. The only cost associated with this rule to affected entities is the reporting burden to provide the required information to EPA as specified in this proposal.

B. Administrative Burden Impacts

Since there is no change in technical requirements, cost impacts to CAFOs are exclusively due to changes in the information collection burden. To determine the administrative burden for the Paperwork Reduction Act (PRA) analysis, the Agency projected the burden that CAFOs would incur because of the new requirements.

To complete this projection, the Agency started with its current estimate of the total number of CAFOs in the U.S. and then examined the administrative burden that would be incurred by these operations. It is important to note that while EPA's estimates of CAFOs are adequate for purposes of completing the impact analyses required under statute and executive order, the data are insufficiently detailed for purposes of identifying precise locations of specific CAFOs or clusters of CAFOs, understanding their operational practices and assessing their potential environmental impacts.

EPA's most recent information on the number of CAFOs in the U.S. shows that as of 2010 there were approximately 20,000 CAFOs, both permitted and unpermitted. To estimate the reporting burden faced by these CAFOs under the proposed rule requirements, EPA examined its prior PRA analyses. These analyses had assumed that CAFOs applying for NPDES permit coverage would incur a nine hour administrative burden to complete and file NPDES permit applications or notices of intent. Based on comparing the reporting items for permit applications to the reporting items in the proposed rulemaking, EPA estimated that a CAFO would need one hour to gather and submit the information on the proposed survey form to EPA as indicated in the proposed rulemaking. This burden estimate reflects both the time to understand the reporting requirements as well as time to complete the survey form electronically or by paper, when necessary.

EPA's PRA analysis combines the updated estimates of numbers of CAFOs and the estimates of the reporting burden to project that CAFO operators would collectively experience an increase in total annual administrative burden of approximately $0.2 million under the first proposed option where all CAFOs would submit their information to EPA. The costs associated with the option to collect information only from CAFOs in focus watersheds would be a subset of these costs.

Under the requirements as laid out in proposed paragraph § 122.23(k)(5) for the first proposed option, state permitting authorities would not incur any administrative burden arising out of the rulemaking since CAFOs would report their information directly to EPA. States would have the option of submitting information on their CAFOs electronically; however, EPA anticipates that the states that would choose this option are those for whom this type of batch reporting would not impose an undue burden.

This **Federal Register** notice also includes an alternative approach that would require states to provide information on CAFOs in their state. EPA costed this alternative approach separately in the proposed rule supporting analysis. Under this approach, the reporting burden would shift from CAFOs to states since states would be responsible for reporting the data proposed to be collected to EPA. To complete a cost estimate for this approach, EPA estimated a cumulative incremental cost based on an assumption that all states would submit their CAFO records as paper files to the Agency. For purposes of costing this scenario, EPA estimated that it would take states one hour to prepare and submit records for 20 facilities. This labor burden combined with photocopying costs yielded a total state respondent average incremental annual cost of $16,391. EPA solicits comment on the burden analysis regarding the requirement for states to submit CAFO information from their regulatory programs.

The documentation in the public record on the PRA analysis for this proposed rulemaking discusses more fully the assumptions used to project the associated administrative burden, including the burden faced by CAFOs that subsequently may need to update any information submitted previously.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51,735; October 4, 1993), this proposed action is a "significant regulatory action." Accordingly, EPA submitted this proposed action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this proposed action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this proposed action. This analysis is summarized in Section IV of this preamble above, entitled *Impact Analysis.* A copy of the supporting analysis is available in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA was assigned EPA ICR No. 1989.08.

The proposed rule would require CAFOs to provide EPA with basic facility information. This action would provide EPA with the information on the universe of CAFOs it needs to ensure compliance with the CWA. EPA projects that the proposed rule would cause CAFO operators to experience an increase in annual administrative burden of 6,960 labor hours annually, which translates into an increased annual administrative cost of $0.2 million. The increase in administrative costs is based on projecting submission costs for all CAFOs, and is derived exclusively from the recordkeeping and reporting requirements associated with submitting the required information to EPA as detailed in the proposed rule. EPA assumed for purposes of the PRA analysis that a CAFO would incur a labor burden of one hour for filing the required information. The proposed action would not impose any new capital costs on affected entities. The burden for the initial reporting is averaged over three years for purposes of calculating burden under the PRA. EPA requests comment on its estimate of burden and costs for CAFOs to comply with the reporting requirements in the two co-proposed rule options.

Under the proposed rule, states would have the option of providing EPA with datasets on their CAFOs with existing NPDES permits. However, the effort to generate these datasets is not costed as part of the ICR since EPA assumes that the states that choose to provide the datasets to EPA would be the ones for whom this task would not be overly

burdensome, and the burden the states would incur would be in lieu of a comparable burden avoided by CAFOs that the states reported for.

Additional details on the assumptions and parameters of the PRA analysis are available in the ICR document referenced above, which is available in the docket supporting this proposed rulemaking. Burden is defined at 5 CFR 1320.3(b).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this proposed rule, which includes the ICR, under Docket ID number EPA–HQ–OW–2011–0188. Please submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 21, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by November 21, 2011. The final rule would respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires a Federal agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business based on Small Business Administration (SBA) size standards at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed rule does not change any of the substantive requirements for CAFO operators. While it does increase the net paperwork burden faced by facilities compared to the burden imposed under the 2003 CAFO rule, these incremental costs are small compared to the existing paperwork burden faced by CAFOs and represent an increase in annualized compliance costs that is significantly less than one percent of estimated annual sales for any of the affected entities. To reach this determination, EPA examined sales figures reported in USDA's publicly available aggregated data and concluded that it is unlikely that the estimated upper-bound burden impact of one hour per CAFO would exceed one percent of the average annual sales of any of the livestock operations for whom sales figures were reported.

Additionally, this proposed rule would not affect small governments, as the permitting authorities are state or Federal agencies and the information would be submitted directly to EPA.

EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures by state, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. The proposed rule also presents an alternative approach that would require states to submit information on CAFOs. EPA determined that this alternative approach, which principally would involve photocopying, would also not result in a burden above the threshold. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule would contain no regulatory requirements that might significantly or uniquely affect small governments. There are no local or tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or tribal governments who are owners or operators of CAFOs. Thus, this rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. Since the reporting under the proposed rule would require CAFOs to submit their information directly to EPA, it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would offer states the option of submitting information on behalf of the state's CAFOs. However, the proposed rule would not require states to adopt

this option; therefore, EPA does not consider this proposed rule to have a substantial impact on states. Thus, Executive Order 13132 does not apply to this proposed action.

EPA is requesting comment on alternative approaches for gathering CAFO information. One of these approaches would require States to submit information on their CAFOs. EPA examined costs associated with this alterative and concluded based on a conservative estimate of burden impacts that the alternative would not trigger federalism concerns.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because there are currently no tribal governments authorized for the NPDES program. In addition, EPA is not aware of any Indian tribal governments that own CAFOs that would be subject to the proposed reporting requirements. Thus, Executive Order 13175 does not apply to this action.

This proposed rulemaking could have the effect of providing increased opportunities for the tribal governments to obtain information on all CAFOs within their governmental boundaries and, as such, may facilitate their interactions with entities of possible concern.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA would also distribute information on the outcome of the rulemaking process once the rulemaking action is finalized.

EPA solicits comment on the Agency's approach to meeting its obligations under E.O. 13175 for the proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19,885; April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The benefits analysis performed for the 2003 CAFO rule determined that the rule would result in certain significant benefits to children's health. (Please refer to the *Benefits Analysis* in the record for the 2003 CAFO final rule.) This proposed action does not affect the environmental benefits of the 2003 CAFO rule.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects since CAFOs in general do not figure significantly in the energy market, and the regulatory revisions finalized in this rule are not likely to change existing energy generation or consumption profiles for CAFOs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve the use of technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that the information collected by this rule could benefit minority and low-income populations by providing information on nearby CAFOs with potential effects on neighboring communities. In addition, the Agency anticipates that the information to be collected under the rulemaking would aid EPA's consideration of environmental justice concerns as the Agency moves forward with implementation of the NPDES CAFO program.

As part of EPA's continued effort to meet its obligations under E.O. 12898, the Agency has completed an analysis to identify those portions of the country where there are both large numbers of CAFOs as well as concentrations of minority and low-income populations. These regions include parts of the Carolina lowlands, central California and the Delmarva Peninsula on the Chesapeake Bay.

EPA solicits comment on the ability of the questions as proposed to support consideration of environmental justice (EJ) concerns related to future design and implementation of the NPDES CAFO program. EPA seeks comment on what other questions beyond those proposed would support EJ concerns and be valuable to EJ communities. EPA welcomes suggestions for EJ groups who could help shape the Agency's outreach to EJ communities. EPA also seeks comment on its analysis supporting E.O. 12898, which shows where large numbers of CAFOs and EJ communities co-exist. The supporting analysis is contained in the docket for the proposed rulemaking.

United States Environmental Protection Agency
Washington, DC 20460 Form Approved

OMB No. 2040-0250

EPA ICR No. 1989.08

INFORMATION GATHERING SURVEY FORM FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

SUBMISSION INFORMATION

Electronic Submission Waiver

☐ I hereby acknowledge a waiver from the use of EPA's electronic information management system because the use of such system will incur undue burden or expense over my use of this paper survey form. Briefly describe the reason why use of the electronic system causes undue burden or expense.

_____.

Please check the appropriate box. Check only one checkbox.

☐ First Submission
☐ Resubmission with changes to the information supplied previously
☐ Resubmission with no change to the information supplied previously
☐ Operation no longer a concentrated animal feeding operation (CAFO)

QUESTION 1. CONTACT INFORMATION

Provide contact information by completing the table below.

OWNER/OPERATOR INFORMATION or AUTHORIZED REPRESENTATIVE INFORMATION	
Name of the Owner/Operator OR Authorized Representative	
Primary Telephone for Owner/Operator or Authorized Representative	Email Address (if available)
Mailing Address	
Street/P.O. Box	City
State	Zip Code

QUESTION 2. LOCATION INFORMATION

Please provide the location of the production area either by 1) latitude and longitude (in decimal degrees); or by the street address of the CAFO's production area.

Geographic Latitude and Longitude of the Production Area	
Latitude:	Longitude:

OR

Address of the CAFO's Production Area	
Street Address	City
State	Zip Code

QUESTION 3. NPDES PERMIT INFORMATION

Does the CAFO have a current NPDES permit?

☐ No: Proceed to *Section 4. Type and Number of Animals* .

☐ Yes: Provide NPDES permit number and the date of issuance:

NPDES Permit No./Tracking No./ID:_____

Date of issuance: Month:_____Day:_____Year:_____

☐ Pending: Provide the date that the NOI or permit application was submitted for coverage under an NPDES permit:

Month:_____Day:_____Year:_____

QUESTION 4. TYPE AND NUMBER OF ANIMALS

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof at the CAFO for a total of 45 days or more in the previous 12 months. The 45 days do not have to be consecutive.

4.1.1 ANIMAL TYPE	4.1.2 MAXIMUM NUMBER OF ANIMALS
❑ Mature Dairy Cows (milked or dry)	
❑ Veal Calves	
Cattle (not dairy or veal calves) ❑ Heifers ❑ Steers ❑ Bulls ❑ Cow/calf pairs	
❑ Swine (55 lbs. or over)	
❑ Swine (under 55 lbs.)	
❑ Horses	
❑ Sheep or Lambs	
❑ Turkeys	
❑ Chickens (Broilers)	
❑ Chickens (Layers)	
❑ Ducks	
❑ Other: Please Specify	

QUESTION 5. LAND APPLICATION

Where the CAFO land applies manure, litter, or process wastewater:

a. In the previous 12-months, how many acres of land under the control of the CAFO were available for applying the CAFO's manure, litter, and/or process wastewater? (Please include land owned by the CAFO, land that is rented or leased **from others,** and any land that is owned by the CAFO that is rented or leased **to others in which the owner or authorized representative of the CAFO retains nutrient management decisions).** _____-_____acres

SIGNATURE REQUIREMENTS

All submissions provided pursuant to this information gathering survey form must be signed and dated by a responsible party in accordance with 40 CFR 122.22 for following certification statement:

I certify under penalty of law that I am the responsible party for a concentrated animal feeding operation (CAFO), identified as [Name of CAFO]. Based on my inquiry of the person or persons directly responsible for gathering the information, I certify that the information contained in or accompanying this submission, to the best of my knowledge and belief, is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature_____ Printed Name_____
Title_____
Date_____

INSTRUCTION SHEET

GENERAL INSTRUCTIONS

Defined Terms

Terms in italics below are specifically defined in the Survey Form Definitions section of these instructions. Refer to this section for specific meaning of these terms.

Purpose of Form

Owners of concentrated animal feeding operations (CAFOs) must use this survey form to submit the information required by 40 CFR 122.23(k).

Who Must File

Owners of CAFOs are required to submit the information specified at 40 CFR 122.23(k) regardless of whether the CAFO is required to seek NPDES permit coverage. For the purposes of this survey, a CAFO means an animal feeding operation (AFO) that is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23(b), or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Further definitions for the purpose of this form are in the section, Survey Form Definitions. The owners of AFOs that have not been designated and that do not confine the required number of animals to meet the definition of a Large or Medium CAFO are not required to submit information.

Where to Submit

Send the completed and signed survey form to:

U.S. EPA, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Avenue, NW., Washington, DC 20460

When to Submit

Under proposed option 1, owners of CAFOs must submit the survey form to EPA [within 90 days after EPA makes available a list of CAFOs for which a state has provided the information] and under proposed option 2, owners of CAFOs must submit the survey form by [the deadline specified in a separate Federal Register Notice]. NPDES authorized states that choose to submit the information on behalf of a CAFO would be required to submit the information to EPA [within 90 days after the effective date of the rule]. Subsequently, under proposed option 1, owners of CAFOs not authorized by an NPDES permit must resubmit the survey form between [January 1 and June 1, 2022] and every subsequent tenth year thereafter between [January 1 and June 1]. The survey form provides a checkbox that indicates such resubmissions.

Entering Responses

CAFOs must provide the information on this survey form electronically except where electronic submission would cause an undue burden or expense. Electronic submissions may be made via the Agency's information management system. Please go to *www.epa.gov/npdes/afo* for more information on how to submit.

However, EPA is making paper filing available in recognition that not everyone has internet access. If using a hardcopy of the form to submit the information, use blue or black ink only to complete a hardcopy of the survey form. Mark the electronic submission waiver box and provide a reason why the respondent is providing the information by completing and submitting a hard copy of this survey form.

Please print clearly. Mark all applicable checkboxes with an "X".

Changes at the operation after the owner submits this information are not required to be reported, except that CAFOs not authorized by an NPDES permit must resubmit the survey form every 10 years as specified above.

Confidential Business Information

Regulations governing the confidentiality of business information are contained in the Code of Federal Regulations (CFR) at Title 40 Part 2, Subpart B. Under sections 2.208, business information is entitled to confidential treatment if, "the business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position. You may assert a business confidentiality claim covering part or all of the information you submit, as described in 40 CFR 2.203(b):

"(b) Method and time of asserting business confidentiality claim. A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice complying language such as 'trade secret', 'proprietary,' or 'company confidential.' Allegedly confidential portions of otherwise nonconfidential documents should be clearly identified by the business, and may be submitted separately to facility identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state"

If you claim any response as CBI, you must specify the portion of the response or document for which you assert a claim of confidentiality by reference to page numbers, paragraphs, and lines, or specify the entire response or document. This information must be provided as part of the submission of the completed survey form. Note that EPA will review the information submitted and may request your cooperation in providing information to identify and justify the basis of your CBI claim. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent of, and by means of, the procedures set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentially claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with implementing the Clean Water Act.

SURVEY FORM INSTRUCTIONS

Submission Information

Please check the appropriate box to indicate whether the CAFO is supplying information for the first time or resubmitting the survey form. A CAFO may also voluntarily update their information if the operation is no longer a CAFO.

Section 1. Contact Information

Use legal names. Provide the mailing address for the owner of the CAFO or authorized representative. The address may be a business address, a post office box, or the address of the CAFO owner or authorized representative. A county road number may indicate the operation's street address.

Section 2. Location Information

Provide location of the production area either by the latitude and longitude for the production area or by the street address of the CAFO's production area. Please provide latitude or longitude in degree decimals. For CAFOs that have multiple production areas, such as facilities under common ownership, that either adjoin each other or use a common area or system for waste disposal, the entrance to the production area for the largest portion of the CAFO should be provided.

For the purposes of this form, the entrance to the production area may be a road leading to the confinement houses or the central point of access to the operation. This information is commonly included in a nutrient management plan or, alternatively, the respondent may determine the latitude and longitude for the entrance to the production area by using interactive maps available on the internet. Latitude or longitude information can be obtained at the following websites: *http://www.satsig.net/maps/lat-long-finder.htm, http://earth.google.com/,* and *http://www.census.gov/geo/landview/.* If the units for the CAFO's latitude or longitude is in minutes/seconds, this information can be readily converted through a variety of free internet applications.

The respondent need only provide either the CAFO's latitude and longitude or the street address of the CAFO's production area.

Section 3. NPDES Permit Information

Use the appropriate checkbox to indicate whether the CAFO has a current NPDES permit. A current NPDES permit would provide coverage to the CAFO as of the date the report is submitted. If you have an NPDES permit, check the "Yes" box and provide the NPDES permit number and the date of issuance for NPDES permit coverage. NPDES permit coverage may have been issued to the CAFO after submitting an individual NPDES permit application or a Notice of Intent (NOI) for coverage under a general NPDES permit. CAFOs should find their NPDES permit number on the copy of the permit for an individual permit or on the written notification from the permitting authority acknowledging receipt of the NOI. States may refer to the NPDES permit number as a tracking number, operating permit number, or state identification number. For example, Maryland identifies its general NPDES permit as "MDG01," whereas, Missouri's general operating permit number "MO–G010000."

If you do not have an NPDES permit, check the "No" box and go to Section 4. Type and Number of Animals. If you applied for an NPDES permit but have not received any notice of coverage, please check the "Pending" box and provide the date that the NOI or NPDES permit application was submitted.

Section 4. Type and Number of Animals

Use the table to indicate the maximum number of animals for each animal type held either in open confinement including partially covered or housed totally under roof held at the CAFO for a total of 45 days or more in the previous 12 months.

CAFOs with multiple production cycles should provide the maximum number of animals confined for any given production cycle. Multiple production cycles are common at poultry and swine operations. CAFOs under common ownership should report the cumulative number of animals confined for 45 days or more.

It is important to note that the 45 days do not have to be consecutive, and the 12-month period does not have to correspond to the calendar year. The 12-month does not have to correspond to the calendar year. If an animal is confined at an operation for any portion of a day, it is considered to be confined for a full day. Please see definition of an animal feeding operation of these instructions.

EXAMPLE: A calf/cow operation that has the capacity to hold 2,000 head of cattle. The facility operates year-round and never confines less than 1,000 head of cattle at any one time. The facility has both pasture and partially opened barns. The operation meets the definition of a CAFO because: 1) it confines the required animal numbers to meet the Large CAFO threshold, 2) confines the animals for more than 45 days, and 3) the confinement area does not sustain vegetation. For the last 12-month period, the cow/calf operation split its calving between fall and spring. During the fall, the operation confined 1,500 head of cattle for 45 days or more and during the spring, the operation confined 1,000 head of cattle. This operation should report in the table under calf/cow pairs and list 1,500 under the column for "Open Confinement (include partially covered)".

Section 5. Land Application

Provide the amount of acres available for land application. Report in whole acres, rounding up to the nearest whole number if necessary. Include land associated with the CAFO, whether in production or not. Include all land that the owner or operator owned or rented during the previous 12-month period, even if only for part of the year, and any land that is owned by or rented or leased to others in which the owner or operator of the CAFO retains nutrient management decisions. This may also include situations where a farmer releases control over the land application area, and the CAFO determines when and how much manure is applied to fields not otherwise owned, rented, or leased by the CAFO. Exclude residential or other land not used for agricultural purposes.

Section 6. Signature Requirements

A responsible official in accordance with 40 CFR 122.22 must sign the certification statement provided on the form. Print the name of the signatory. Provide the date of signature and title of the signatory.

SURVEY FORM DEFINITIONS

The definitions provided below are for the purposes of this information gathering survey form. All terms not defined below shall have their ordinary meaning, unless such terms are defined in the Clean Water Act, 33 U.S.C. § 1362, or its implementing regulations found at 40 CFR parts 122 and 412 respectively, in which case the statutory or regulatory definitions apply.

1. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be, stabled, confined, and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (40 CFR 122.23(b)(1)). Two or more AFOs under common ownership are considered to be a single AFO for purposes of determining the number of animals at an operation, if they adjoin each other, are next to, sharing property lines or if they use a common area or system for manure management or the disposal of wastes. (40 CFR 122.23(b)(2)).

2. "Authorized representative" means an individual who is involved with the management or representation of the CAFO. An authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO.

3. "Concentrated animal feeding operation" (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

4. "Large concentrated animal feeding operation" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cows, whether milked or dry; (ii) 1,000 veal calves; (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v) 10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

5. "Manure" includes manure, or bedding or bedding material, hay, compost, and raw material or other materials commingled with manure that is to be land applied or set aside for disposal.

6. "Medium concentrated animal feeding operation" means any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if: (i) The type and number of animals that it stables or confines falls within any of the following ranges: (A) 200 to 699 mature dairy cows, whether milked or dry; (B) 300 to 999 veal calves; (C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (D) 750 to 2,499 swine each weighing 55 pounds or more; (E) 3,000 to 9,999 swine each weighing less than 55 pounds; (F) 150 to 499 horses; (G) 3,000 to 9,999 sheep or lambs; (H) 16,500 to 54,999 turkeys; (I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and (ii) Either one of the following conditions are met: (A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

7. "Owner or operator" means the property owner or any person who owns, leases, operates, controls, or supervises the operations at the CAFO. Any person who operates an AFO subject to regulation under the NPDES program may be involved with making day-to-day decisions about, or doing, such things as planting, harvesting, feeding, waste management, and/or marketing. The operator can include, but is not limited to, the owner, a member of the owner's household, a hired manager, a tenant, a renter, or a sharecropper.

8. "NPDES Permit" means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of the CWA NPDES permitting program and implementing regulations at 40 CFR parts 122, 123, and 124.

9. "Process wastewater" means water directly or indirectly used in the operation of the AFO including but not limited to: spillage or overflow from animal or poultry watering systems; washing; cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproduct including, manure, litter, feed, milk, eggs, or bedding.

10. "Producer" means any grower, breeder, or person who otherwise raises animals for production.

11. "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

12. "Storage pond" means an earthen impoundment used to retain manure, bedding, process wastewater (such as parlor water) and runoff liquid.

13. "Waste" and/or "wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste, including but not limited to manure, litter, and/or process wastewater, discharged into water.

Federal regulations require the certification to be signed as follows:

A. For a corporation, by a principal executive officer of at least the level of vice president.

B. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

C. For a municipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

Paper Reduction Act Notice

The public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. The estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Include the OMB control number in any correspondence. Do not send the completed survey form to this address.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

Dated: October 14, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; Executive Order 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding an entry in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
122.23(k)	2040–0250

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

3. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

4. Section 122.23 is amended by adding paragraph (k) to read as follows:

§ 122.23 Concentrated animal feeding operations (applicable to state NPDES programs, see § 1223.25)

* * * * *

Option 1 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs.* (1) *All CAFOs must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), must provide the information specified in paragraph (k)(2) of this section to the Administrator, except in cases where a state voluntarily fulfills this requirement on behalf of the owner(s) or operator(s) of CAFOs located within that state, according to the procedures specified in paragraph (k)(5) of this section.

(2) *Information to be submitted to the Administrator.* The owner or operator of a CAFO or a state must provide the following information to the Administrator:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who is involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(3) *Submission process for CAFOs.* The owner or operator of a CAFO must submit the information specified in paragraph (k)(2) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in (k)(4) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(4) *Deadline for submissions by owners or operators of CAFOs. (i) An operation defined or designated as a CAFO as of [the effective date of the final rule], where a state did not provide the required information to EPA in accordance with paragraph (k)(5) of this section.* Where a state does not provide the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, a CAFO must submit the information required by paragraph (k)(2) in accordance with paragraph (k)(3) [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(ii) *CAFOs for which a state has provided the required information to EPA in accordance with paragraph (k)(5) of this section.* CAFOs for which a state submitted the information required by paragraph (k)(2) of this section in accordance with paragraph (k)(5) of this section, may, but are not required to, provide information to EPA [within 90 days] after EPA makes available a list of CAFOs for which a state has provided the information.

(iii) *Resubmission requirement for CAFOs not authorized by an NPDES permit.* CAFOs not authorized by an NPDES permit must submit the information specified in paragraph (k)(2) of this section or update information previously submitted, pursuant to the procedures specified by paragraph (k)(3) of this section, between January 1 and June 1 every ten years following 2012 (*e.g.*, 2022, 2032, *etc.*). The periodic submission requirement applies to all CAFOs not authorized by an NPDES permit at the time of these dates, whether or not CAFOs at one point had permit coverage at any time prior to these dates. CAFOs established after the first 2012 information submission period that do not have NPDES permits are subject to this ten-year resubmission requirement.

(5) *Elements of state voluntary submissions.* In order to fulfill the requirements of paragraphs (k)(1) and (k)(2) of this section on behalf of CAFOs, a state must:

(i) Use the Agency's electronic information management system to submit the information.

(ii) Submit information from the state's most recent application process, from a CAFO's most recent annual report, or from another current information source,

(iii) Submit the information [within 90 days after the effective date of the rule].

Option 2 for Paragraph (k)

(k) *Information Gathering Survey for CAFOs in Focus Watersheds. (1) CAFOs in focus watersheds must submit information to EPA.* The owner(s) or operator(s) of a CAFO, as defined in 40 CFR 122.23(b), located in a focus watershed as identified by EPA as provided in paragraph (k)(2) of this section, must, if so notified as provided in paragraph (k)(3), provide the information specified in paragraph (k)(4) of this section to the Administrator according to the procedures specified in paragraph (k)(5) of this section by the deadline specified in (k)(6) of this section.

(2) *How will EPA identify a focus watershed?* To identify a focus watershed, EPA shall:

(i) Determine that the area has water quality concerns associated with CAFOs, including but not limited to nutrients (nitrogen and phosphorus), pathogens (bacteria, viruses, protozoa), total suspended solids (turbidity) and organic enrichment (low dissolved oxygen), and consider one or more of the following criteria;

(A) High priority watershed due to other factors such as vulnerable ecosystems, drinking water source supplies, watersheds with high recreational value, or watersheds that are outstanding natural resource waters (Tier 3 waters);

(B) Vulnerable soil type;

(C) High density of animal agriculture; and/or

(D) Other relevant information; and

(ii) Define the geographical location and extent of the focus watershed using Zip Codes, counties, hydrologic unit codes (HUCs), or other relevant information that would define the geographical location and extent of an area.

(3) *How will EPA notify CAFOs in a focus watershed if they have an obligation to provide information?* If EPA is unable, after reasonable effort, to obtain the information in paragraph (k)(4) of this section from all CAFOs in a focus watershed, EPA will:

(i) Conduct outreach in the focus watershed regarding the need for CAFOs to submit the information specified in paragraph (k)(4) of this section for a minimum of [30] days,

(ii) Provide notice to the CAFOs of the need to submit information and the timing for such request by notice in the **Federal Register** and other appropriate means in the focus watershed.

(4) *Information to be submitted to the Administrator.* The owner or operator of a CAFO located in a focus watershed identified by EPA as provided in paragraph (k)(2) of this section must provide the following information to the Administrator, if so notified in accordance with paragraph (k)(3) of this section:

(i) The legal name of the owner of the CAFO or an authorized representative, and their mailing address, e-mail address (if available) and primary telephone number. (An authorized representative must be an individual who in involved with the management or representation of the CAFO. The authorized representative must be located within reasonable proximity to the CAFO, and must be authorized and sufficiently informed to respond to inquiries from EPA on behalf of the CAFO);

(ii) The location of the CAFO's production area identified by the latitude and longitude; or by the street address;

(iii) If the owner or operator has NPDES permit coverage as of [the effective date of final rule], the date of issuance of coverage under the NPDES permit, and the permit number. If the owner or operator has submitted an NPDES permit application or a Notice of Intent as of [the effective date of final rule] but has not received coverage, the date the owner or operator submitted the NPDES permit application or Notice of Intent;

(iv) For the previous 12-month period, identification of each animal type confined either in open confinement including partially covered areas, or housed totally under roof at the CAFO for 45 days or more, and the maximum number of each animal type confined at the CAFO for 45 days or more; and

(v) Where the owner or operator land applies manure, litter and process wastewater, the total number of acres under the control of the owner or operator available for land application.

(5) *Submission process for CAFOs in focus watersheds.* The owner or operator of a CAFO located in a final focus watershed, if so notified by EPA, must submit the information specified in paragraph (k)(4) of this section using the survey form provided by the Administrator. The owner or operator of a CAFO located in a focus watershed and so notified must submit the survey form to the Administrator, either by certified mail, or electronically, through the Agency's electronic information management system by the deadline specified in paragraph (k)(5) of this section. If submitting the survey form by certified mail, the owner or operator of a CAFO located in a focus watershed must indicate on the survey form that an electronic submission waiver applies and provide justification as to why

electronic submission would cause an undue burden or expense.

(6) *Deadline for submissions by owners or operators of CAFOs in focus watersheds.* The owner or operator of a CAFO located in a focus watershed and so notified must submit the information required by paragraph(k)(4) of this section in accordance with paragraph (k)(5) of this section [within 90 days] after EPA notifies CAFOs of such obligation in accordance with paragraph (k)(3).

[FR Doc. 2011–27189 Filed 10–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0937–201118; FRL–9480–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Cincinnati-Hamilton 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 27, 2011, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division of Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana (hereafter referred to the "Tri-state Cincinnati-Hamilton Area") fine particulate matter ($PM_{2.5}$) nonattainment area to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Tri-state Cincinnati-Hamilton Area. The Tri-state Cincinnati-Hamilton Area is comprised of Boone, Campbell, and Kenton Counties in Kentucky (hereafter referred to as the "Northern Kentucky Area" or "Area"); Butler, Clermont, Hamilton, and Warren Counties in Ohio; and a portion of Dearborn County in Indiana. EPA is proposing to approve the redesignation request for Boone, Campbell, and Kenton Counties, along with the related SIP revision, including the Commonwealth's plan for maintaining attainment of the $PM_{2.5}$ standard in the Northern Kentucky Area. EPA is also proposing to approve Kentucky's nitrogen oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Northern Kentucky Area. On December 9, 2010, and January 25, 2011, respectively, Ohio and Indiana submitted requests to redesignate their portion of the Tri-state Cincinnati-Hamilton Area to attainment for the 1997 $PM_{2.5}$ NAAQS. EPA is taking action on the requests from Ohio and Indiana in an action separate from these proposed actions.

DATES: Comments must be received on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0937, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0937, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0937. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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11-001-7674

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

NOV 15 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

I am responding to your letters sent to Margo Oge and me on October 18, 2011, asking for clarification on statements made at the October 12, 2011 hearing. The U.S. Environmental Protection Agency (EPA) establishes emissions standards for cars and trucks, and does not establish fuel economy standards. Our emissions standards for greenhouse gases (GHGs) differ from fuel economy standards in several important ways. EPA's emissions standards are designed to address the public health and welfare problems from air pollution.[1] The GHG standards control emissions of four GHGs, carbon dioxide (CO_2), nitrous oxide (NO), methane (CH_4), and hydroflourocarbons (HFCs), some of which have no overlap with fuel efficiency. In addition, the GHG emissions standards are defined in terms of grams of emissions of GHG per mile, not miles per gallon. While a gasoline and a diesel car may have identical miles per gallon for fuel economy, they will have significantly different CO_2 grams per mile because of differences in the carbon content of the fuel. Likewise, under EPA's GHG standards, operating a vehicle on electricity generally leads to a compliance value of zero grams per mile tailpipe emissions, while operation on electricity receives a specified mile per gallon value for fuel economy under the CAFE program.

The EPA has always recognized that, generally, the same technologies are used to reduce emissions of CO_2 and to increase fuel economy. Technology that makes a vehicle more fuel efficient results in using less fuel to travel a given distance or perform a certain amount of work, which reduces emissions of CO_2 and increases fuel economy. This technology overlap led EPA and the National Highway Traffic Safety Administration (NHTSA) to develop a joint technological basis in establishing the National Program.[2] Our joint technical work provided the basis for the successful 2012-2016 model year joint rulemaking, and will provide the same kind of robust, data-driven scientific basis for the proposal for 2017-2025 model year standards.

With respect to the scope of the express preemption provision in the Energy Policy and Conservation Act (EPCA), 49 U.S.C. 32919(a), our previous response to question 12 of your letter of September 30,

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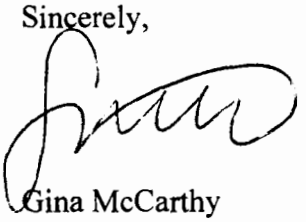
[1] As discussed above, in *Massachusetts v. EPA* the Supreme Court held that GHGs are air pollutants under the Clean Air Act, and that EPA must determine whether emissions of GHGs from cars and trucks "*cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare*" – which we have done through the Endangerment Finding. The Court further held that if EPA made such a determination, then EPA must act under Section 202(a) of the CAA —our authority for setting motor vehicle emission standards.

[2] 75 Fed. Reg. 25324, 25327 (May 7, 2010).

2011, explains the relationship of this EPCA provision to the Clean Air Act provision for a waiver of preemption of state motor vehicle emissions standards. As NHTSA has responsibility for setting federal fuel economy standards under EPCA, I would also refer you to the response to question number 23 in Secretary LaHood's letter of October 17, 2011, responding to your letter of September 30, 2011. In that response, Secretary LaHood explained that the National Program "simply does not implicate the statutory preemption provision." In light of that statement, there is no reason to address the scope of the EPCA preemption.

I trust the information provided above is useful. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,



Gina McCarthy
Assistant Administrator

11-001-7569

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 27 2012

OFFICE OF
AIR AND RADIATION

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 17, 2011, to Associate Administrator Michael L. Goo, requesting that the EMPAX Computable General Equilibrium (CGE) model be made available to the public. Mr. Goo has asked that I respond on his behalf.

We agree with you that the peer-reviewed EMPAX model should be publicly available, and we are working to make this model available through EPA's website. In addition to providing access to the EMPAX model, we will provide information on model operating requirements, including access to sources of data required to configure and run the model. For example, similar to many sophisticated economic models, EMPAX requires additional standard mathematical software to run the model, as well as economic input data. EPA's documentation for the model, which will also be available on the website, will explain what software and economic input data we use.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

Gina McCarthy
Assistant Administrator

AC-11-000-6995

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 22 2011

OFFICE OF
AIR AND RADIATION

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

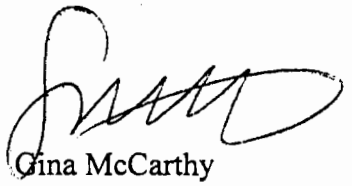
Thank you for your letter of May 2, 2011, following up on my testimony before the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending regarding the impact of the U.S. Environmental Protection Agency's greenhouse gas (GHG) regulations on small business. I have provided responses to your enumerated questions in the enclosed document. In addition, I am including documents responsive to your request on the enclosed CD.

As I stated in my testimony before the Subcommittee, the EPA is taking a common sense, phased approach to meeting our obligations under the Clean Air Act to address carbon pollution. The Agency is keenly aware of the concerns of small businesses in regard to greenhouse gas standards, and has taken numerous steps to eliminate or minimize the impacts of such standards on small businesses. The EPA has a long history under the Clean Air Act of protecting human health and the environment while supporting strong economic growth. The Agency is applying the same tools that we have been using for the last 40 years to protect public health to now address greenhouse gas emissions. Those tools have proven their worth over the years in improved public health, economic and job growth, and technological innovation.

The EPA undertakes extensive economic analysis of the costs and benefits of its Clean Air Act standards, including the greenhouse gas standards addressed by your letter. As indicated in the enclosed responses, the Agency has fully complied with its obligations to analyze its greenhouse gas standards under section 317 of the Clean Air Act. Section 321 of the Clean Air Act authorizes the EPA to investigate specific allegations that actions under the Act have resulted or will result in job losses. The EPA has not received any request under section 321 to investigate any such alleged impacts of those standards. Finally, our analyses of the cumulative benefits and costs of Clean Air Act programs have consistently shown large benefits that greatly exceed, by factors of 30 or more, the costs of implementing the Act.

Again, thank you for your letter and for your interest in this important subject. I look forward to continuing to work with you. If you have any questions regarding the subject of this response, please contact me or your staff may call Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638.

Sincerely,



Gina McCarthy
Assistant Administrator

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Member

Responses to Questions and Requests

1. **A full and complete explanation as to whether a section 317 analysis has been completed for the Car Rule, Tailoring Rule, and Endangerment Finding and submission of any of these analyses.**

The EPA was not required to do a section 317 analysis of the Endangerment Finding because that finding is not an action listed in section 317(a), and thus was not an action to which section 317 applies.

The EPA met its obligations under section 317 for both the Car Rule and the Tailoring Rule. The economic analyses completed by the EPA to support the Car Rule and the Tailoring Rule fully satisfy the requirements of section 317, including both the procedural requirements in section 317(b) and the substantive requirements for the analysis in section 317(c).

The text and legislative history of section 317 make clear that Congress intended this provision to be applied pragmatically. Section 317(d) states that "[t]he assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under [the Clean Air Act]." See also 123 Cong. Rec. 26850 (Aug. 4, 1977) (Senate consideration of the Conference Report) ("Consequently, the Administrator may make reasonable judgments about which analyses must be done to comply with this section and the depth of analysis required.").

An overview of how each of the substantive requirements of section 317(c) was satisfied for both the Car Rule and the Tailoring Rule follows. For each of the two rules, this explanation is organized on the basis of the five paragraphs of section 317(c).

Car Rule:

"(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;"

The rulemaking fully assesses the costs of the model year (MY) 2012-2016 standards, and these assessments are fully described in the preamble and Regulatory Impact Analysis (RIA). The EPA's cost assessment included a full range of costs, including costs for individual automobile manufacturers, industry average per-vehicle compliance costs, industry average technology outlays, and consumer savings due to saving money on fuel costs. See Preamble Section III.H.2 Costs Associated with the Vehicle Program (75 Fed. Reg. 25,513) (May 7, 2010) and Section III.H.4 Reduction in Fuel Consumption and Its Impacts (75 Fed. Reg. 25,516); RIA Chapter 6: Vehicle Program Costs Including Fuel Consumption Impacts. The EPA also explained in detail how the effective dates for the standards provided sufficient lead time for compliance, and how the choice of standard stringency was tied to the industry's vehicle redesign cycles to assure the most cost effective means of compliance. 75 Fed. Reg. 25,467-68. Similar analyses were part of the record for the proposed rule.

In addition, the EPA assessed the impacts and costs of both more and less stringent standards. Specifically, the EPA assessed standards that would reduce CO2 emissions at a rate of 4% per

year and 6% per year. The EPA's basis for rejecting these alternative standards is discussed at 75 Fed. Reg. 25,465-68, and the assessment is fully presented in the RIA, Chapter 4.

"(2) the potential inflationary or recessionary effects of the standard or regulation;"

The EPA's assessment in the MY2012-2016 final rule analysis does not indicate that there will be any inflationary or recessionary effects of the standards. The light-duty greenhouse gas program results in a net savings to consumers, as the fuel savings due to improved fuel efficiency over the lifetime of a vehicle far outweigh the initial up front increased vehicle costs. The EPA estimates that the average cost increase for a model year 2016 vehicle due to the national program will be approximately $950. Consumers would save more than $3,000 over the lifetime of a model year 2016 vehicle (that is, the $4,000 saved on fuel more than offsets the increased cost of the vehicle). See 75 Fed. Reg. 25,516-20.[1]

This issue is also discussed further in section (4) below.

"(3) the effects on competition of the standard or regulation with respect to small business;"

The EPA exempted from the greenhouse gas emissions standards small entities meeting the Small Business Administration (SBA) size criteria of a small business as described in 13 C.F.R. 121.201. This exemption is described in the Final Rule preamble at 75 Fed. Reg. 25,424 and 75 Fed. Reg. 25,440, and in Chapter 9 of the Final Regulatory Impact Analysis. The Car Rule thus has no direct impact on small businesses.

"(4) the effects of the standard or regulation on consumer costs;"

As noted above, the EPA estimates that the average cost increase for a model year 2016 vehicle due to the national program will be approximately $950. U.S. consumers who pay for their vehicle in cash will save enough in lower fuel costs over the first three years, on average, to offset these higher vehicle costs. Consumers using an average 5-year, 60-month loan would see immediate savings due to their vehicle's lower fuel consumption in the form of reduced annual costs of $130-$180 a year throughout the duration of the loan (that is, the fuel savings will outweigh the increase in loan payments by $130-$180 per year). Whether a consumer takes out a loan or pays for their vehicle in cash, consumers would save more than $3,000 over the lifetime of a model year 2016 vehicle (that is, the $4,000 saved on fuel more than offsets the increased cost of the vehicle). To calculate these fuel savings, fuel prices (including taxes) were estimated to range from $2.61/gallon in 2012, to $3.60/gallon in 2030, to $4.49/gallon in 2050, based on Department of Energy projections.

"(5) the effects of the standard or regulation on energy use."

[1] See also H.1 - Conceptual Framework for Evaluating Consumer Impacts (75 FR 25510); H.2 – Costs Associated with the Vehicle Program (75 FR 25513); H.4 – Reduction in Fuel Consumption and Its Impacts (75 FR 25516); H.5 – Impact on U.S. Vehicle Sales and Payback Period (75 FR 25517); RIA Chapter 6: Vehicle costs and consumer fuel savings estimates. RIA Chapter 8 Section 8.1 includes Consumer Vehicle Choice Modeling (p.8-4), Consumer Payback Period and Lifetime Savings on New Vehicle Purchases (p. 8-13). Section 8.3 includes analysis/discussion of other consumer related impacts including; (1) Reduced Refueling Time (p. 8-18), (2) Value of Additional Driving (p. 8-19), (3) Noise, Congestion and Accidents (p. 8-19).

The EPA fully assessed the impacts of the MY2012-2016 standards on energy use. Over the lifetime of the vehicles sold during MY 2012-2016, the standards are projected to save 1.8 billion barrels of oil. The light-duty vehicles subject to this national program account for about 40 percent of all U.S. oil consumption. The EPA also assessed the impacts of these standards on energy security.[2]

Tailoring Rule:

"(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on: (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;"

As explained in the RIA for the rule, the Tailoring Rule provides regulatory relief for over 6 million small greenhouse gas-emitting Title V sources and tens of thousands small greenhouse gas-emitting new or modifying PSD sources.[3] The benefits of the rule are the avoided Title V and PSD permitting and associated regulatory requirements. These benefits will accrue to smaller sources of greenhouse gases and state and local permitting authorities that are granted regulatory relief.[4] The costs of the rule are the foregone greenhouse gas emission reductions that would otherwise occur absent the regulatory relief mandated by the rule.[5] In developing the rule, the EPA considered alternative levels of regulatory relief as well as differing effective dates of the phase-in period prior to establishing the phased-in threshold approach.[6]

There are no emission control requirements or associated costs imposed by the Tailoring Rule because it is a regulatory relief rule. The rulemaking assesses the costs of the rule in terms of foregone emission reductions at alternative regulatory thresholds and the associated benefits of the rule (i.e. avoided permitting costs) at alternative threshold levels both more and less stringent than the final rule levels. See the RIA for "The Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" in the docket to the final rule for more details.

"(2) the potential inflationary or recessionary effects of the standard or regulation;"

Since the Tailoring Rule provides regulatory relief, it has neither inflationary nor recessionary effects on the economy.[7]

"(3) the effects on competition of the standard or regulation with respect to small business;"

---

[2] See also Preamble Section H.4 - Reduction in Fuel Consumption and Its Impacts (75 FR 25516); Preamble Section III.H.8 - Energy Security Impacts (75 Fed. Reg. 25,531); RIA Chapter 6 Section 6.3 provides Fuel Consumption Impacts analysis (p. 6-14); RIA Chapter 8 Section 8.2 includes Energy Security Impacts (p. 8-16).

[3] See the Regulatory Impact Analysis for the Final Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule available in the docket for the rulemaking or at http://www.epa.gov/ttn/ecas/regdata/RIAs/riatailoring.pdf

[4] Final Tailoring Rule RIA Chapter 3

[5] Final Tailoring Rule RIA Chapter 4

[6] Final Tailoring Rule RIA Chapter 2 and Final Rule Preamble Sections IV.B. and V.B. .

[7] Final Tailoring Rule RIA Chapter 7, Section 7.1

As explained in the RIA for the rule, the Tailoring Rule provides regulatory relief and therefore has no adverse effects on competition in the economy or on small businesses. The EPA considered the impact of the Tailoring Rule on small entities (small businesses, governments and non-profit organizations) as required by the Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA). For informational purposes, the RIA for the final rule includes the SBA definition of small entities by industry categories for stationary sources of greenhouse gases and potential regulatory relief from Title V and NSR permitting programs for small sources of greenhouse gases. Since the Tailoring Rule does not impose regulatory requirements, but rather lessens the regulatory burden of the Clean Air Act requirements on smaller sources of greenhouse gases, no economic costs are imposed upon small sources of greenhouse gases as a result of the rule. Rather the final Tailoring Rule provides regulatory relief for small sources. These avoided costs or benefits accrue because small sources of greenhouse gases are not required to obtain a Title V permit, and new or modifying small sources of greenhouse gases are not required to meet PSD requirements. Some of the small sources benefitting from this action are small entities, and as a result, these entities will benefit from the regulatory relief finalized by the Tailoring Rule.[8]

"(4) the effects of the standard or regulation on consumer costs;"

The effects of the Tailoring Rule on consumer costs were considered in the RIA for the rule. The Tailoring Rule is deregulatory in nature and as such has no adverse impacts on consumer costs.

"(5) the effects of the standard or regulation on energy use."

As required by Executive Order 13211, the EPA assessed the impact of the rule on energy supply and use. The EPA concluded that the Tailoring Rule would not create any new requirements for sources.[9]

2. If the aforementioned analyses have not been completed, I request EPA immediately initiate the analysis and provide it to the Committee.

As explained above, the analyses have been completed for the actions for which they were required.

3. My understanding is a section 317 analysis may not be substituted by other analyses. If you have a different view, please provide a legal explanation that justifies your view.

There is no language in section 317 indicating that any specific labeling of the analysis is required to satisfy the section's requirements. The EPA may satisfy its duties under section 317 by means of documents such as Regulatory Impact Analyses or preambles, provided that these documents address the substantive and procedural requirements set forth in the provision, subject to the flexibility provided by section 317(d). As explained above, the EPA has done so fully with regard to the rulemakings at issue here.

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[8] Final Tailoring Rule RIA Chapters 6 and 7 and Final Rule Preamble Sections VII.C. and VIII.C.

[9] Final Tailoring Rule RIA Chapter 7, Section 7.8 and Final Rule Preamble Sections VII.G. and VIII.H.

4. **A section 321(a) analysis on the individual and cumulative impact of the GHG regulations on potential job losses.**

The EPA has provided detailed regulatory impact analyses for each of its major greenhouse gas regulations that provide extensive information about the economic impact of those rules. Consistent with relevant Executive Orders, EPA estimates the benefits and costs of all of its economically significant rules. EPA's regulatory impact analyses often contain hundreds of pages of detailed work which draws heavily on peer-reviewed literature. Labor, a key factor of production, is intrinsically incorporated into EPA's economic analyses. The economic impacts of the Car Rule, as analyzed in the Regulatory Impact Analysis for that rule, are discussed in the responses to questions 1 and 5. As explained elsewhere in this response, the Endangerment Finding has no economic impact independent of any impacts of the Car Rule, and the Tailoring Rule operates to reduce any potential economic impacts from stationary source preconstruction permitting requirements under the Clean Air Act.

Section 321 of the Clean Air Act authorizes the Administrator of the EPA to investigate, report and make recommendations regarding employer or employee concerns that requirements under the Clean Air Act will adversely affect employment. Section 321(a) provides for "continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this Act and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement." Sections 321(b) and (c) authorize, in general, an employee to petition for an investigation of alleged loss of employment due to Clean Air Act requirements, and establish procedures for such an investigation. Finally, section 321(d) provides that the evaluations or investigations authorized in section 321 do not authorize or require the EPA or the States to modify any Clean Air Act requirement.

Section 321 was added in the 1977 amendments to the Clean Air Act. Both the House and Senate Committee Reports for the 1977 amendments describe the purpose of section 321 as addressing situations where employers make allegations that environmental regulations will jeopardize employment, possibly in order to stimulate union or other public opposition to environmental regulations. The section was intended to create a mechanism to investigate and resolve those allegations. In addition, the section was designed to provide individual employees whose jobs were threatened or lost allegedly due to environmental regulations with a mechanism to have EPA investigate those allegations. The legislative history makes clear that Congress intended to provide a mechanism to respond to specific allegations in particular cases:

> "In any particular case in which a substantial job loss is threatened, in which a plant closing is blamed on Clean Air Act requirements, or possible new construction is alleged to have been postponed or prevented by such requirements, the committee recognizes the need to determine the truth of these allegations. For this reason, the committee agreed to section 304 of the bill [which became section 321 of the Act], which establishes a mechanism for determining the accuracy of any such allegation." H.R. Rep. 95-294, at 317; *see also* S. Rep. 95-127, at 1474-76.

The committee reports do not describe the provision as applying broadly to all regulations or implementation plans under the Clean Air Act.

In keeping with congressional intent, the EPA has not interpreted section 321 to require the Agency to conduct employment investigations in taking regulatory actions. Conducting such investigations as part of rulemakings would have limited utility since section 321(d) expressly prohibits the EPA

(or the States, in case of applicable implementation plans) from "modifying or withdrawing any requirement imposed or proposed to be imposed under the Act" on the basis of such investigations. As noted above, section 321 was instead intended to protect employees in individual companies by providing a mechanism for the EPA to investigate allegations – typically made by employers – that specific requirements, including enforcement actions, as applied to those individual companies, would result in lay-offs. The EPA has not received any request for any such investigation with regard to its GHG regulations.

5. **An analysis of the cumulative impact of all the EPA's GHG regulations on all sectors of the economy and small business.**

The EPA has finalized three significant regulations to control greenhouse gas emissions (the Renewable Fuel Standard, the Tailoring Rule, and the Car Rule), and has proposed one other significant regulation (medium- and heavy-duty vehicle standards). The EPA's practice with significant greenhouse gas rules, as it is for all significant rules, is to conduct a regulatory impact analysis of each rule pursuant to Executive Order 12866 and any applicable statutory or other requirements. When the EPA conducts a regulatory impact analysis, the Agency's normal practice is to include in the base case previously finalized rules that impose regulatory obligations on sources. Thus, for example, when the EPA analyzes the effect on gasoline costs of a new rule, the effect of prior rules on gasoline costs is already accounted for.

The Energy Independence and Security Act of 2007 established lifecycle greenhouse gas emission requirements for biofuels to qualify for the Renewable Fuel Standard (RFS). The EPA issued a final rule (RFS2) implementing that and other changes mandated by the 2007 law (Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program: Final Rule, 75 Fed. Reg. 14,669 (March 26, 2010)). As part of that rulemaking, the EPA conducted a regulatory impact analysis, which can be found at http://www.epa.gov/otaq/renewablefuels/420r10006.pdf. This analysis estimated that, when fully implemented in 2022, the RFS would save $11.8 billion in gasoline and diesel costs, reduce oil imports by $41.5 billion and increase farm income by $13 billion. Other estimated economic impacts are included in the regulatory impact analysis. The EPA also conducted a Regulatory Flexibility Analysis for the RFS2, which can be accessed at http://epa.gov/otaq/renewablefuels/420r10006.pdf and is summarized in the preamble to the RFS2 (see 75 Fed. Reg. at 14,858-862). As detailed in the preamble to the final rule, the EPA took a number of steps to minimize the impact of the RFS2 on small refiners.

In April 2010, the EPA and NHTSA finalized a joint rule to establish a national program consisting of new standards to increase the efficiency of, and reduce the greenhouse gas emissions from, model year 2012 through 2016 light-duty vehicles. Light-duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 Fed. Reg. 25,323 (May 7, 2010). As part of that rulemaking, the EPA conducted a regulatory impact analysis to fully assess the costs of these standards. See Preamble Section III.H.2 Costs Associated with the Vehicle Program (75 Fed. Reg. 25,513) (May 7, 2010) and Section III.H.4 Reduction in Fuel Consumption and Its Impacts (75 Fed. Reg. 25,516); RIA Chapter 6: Vehicle Program Costs Including Fuel Consumption Impacts, which can be found at http://www.epa.gov/otaq/climate/regulations/420r10009.pdf. Among other things, the analysis estimated that, over the lifetime of the covered vehicles, these standards would save 1.8 billion barrels of oil and would save consumers more than $3000 per vehicle. The EPA did not analyze the effect on small businesses because small businesses are exempt from these standards.

In November 2010, the EPA and NHTSA proposed joint rules to establish a Heavy-Duty National Program consisting of new standards to increase the fuel efficiency of, and reduce the greenhouse gas emissions from, model year 2014 through 2018 medium- and heavy-duty engines and vehicles. Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles; Proposed Rules, 75 Fed. Reg. 74,15274152 (November, 2010). As part of that rulemaking, the EPA is conducting a regulatory impact analysis to fully assess the costs of these proposed standards. The draft proposed RIA can be accessed at http://www.epa.gov/otaq/climate/regulations/420d10901.pdf. See Preamble Section VIII "What are the agencies' estimated cost, economic, and other impacts of the proposed program?" (75 Fed. Reg. 74,302)74302) (Nov. 30, 2010) and RIA Chapter 9: "Economic and Social Impacts." The EPA accounted for RFS2 impacts in the baseline emission inventories for this program. Among other things, the analysis estimated that, over the lifetime of the covered vehicles, these proposed standards would save 500 million barrels of oil and would provide benefits to private interests of $35 billion in fuel savings. The EPA did not analyze the effect on small businesses because EPA proposed not to cover small businesses as part of this rulemaking.

In 2010, the EPA finalized the Tailoring Rule, which provides regulatory relief for over six million small greenhouse gas-emitting Title V sources and tens of thousands small greenhouse gas-emitting new or modifying PSD sources. (Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed. Reg. 31,514 (June 3, 210). The EPA conducted a regulatory impact analysis, which is available at http://www.epa.gov/ttn/ecas/regdata/RIAs/riatailoring.pdf. In calculating the benefits of the Tailoring Rule, the EPA analyzed the avoided regulatory burden by sources given regulatory relief by the Rule. The avoided burden focused on the avoided costs for those given regulatory relief of going through the permitting process, but not of any control requirements that would have resulted from the permitting process. The EPA lacked the data necessary to estimate the costs of the avoided control requirements.

The EPA cannot analyze the economic impacts of policies when it is unclear what regulatory obligation would be imposed and on whom. Quite simply, if one does not know what a source will be required to do, one cannot analyze how much it will cost. The greenhouse gas PSD permitting obligations are not sufficiently detailed to be analyzed because the actual regulatory obligation is set through a case-by-case determination by the permitting authority (which is usually a local or state agency) and because the obligation only arises when a new source is built or an existing source increases its emissions significantly and undertakes a major modification. When local permitting authorities make the case-by-case determination through which they set greenhouse gas permit requirements for affected sources, the permitting authorities are required under federal law to take cost into account.

The EPA did not conduct a regulatory impact analysis of the Endangerment Finding because it was a scientific finding and did not itself impose regulatory obligations on private entities.

The EPA has conducted three analyses of the cumulative benefits and costs of regulations promulgated under the Clean Air Act. The first report, "The Benefits and Costs of the Clean Air Act, 1970 to 1990," (October 15, 1997) estimated that the mean estimate of the benefits in 1990 of implementing the Clean Air Act (to the extent they could be monetized) exceeded the costs by approximately 40 to 1. The second report, "The Benefits and Costs of the Clean Air Act, 1990 to 2010" (November 15, 1999), and third report, "The Benefits and Costs of the Clean Air Act from

1990 to 2010" (March, 2011), both analyzed the benefits and costs of implementing Clean Air Act programs since the passage of the 1990 Clean Air Act Amendments. The third report is an updated version of the second analysis; the benefits and costs it analyzed are in addition to the benefits and costs estimated in the first report. The central benefits estimates (to the extent that benefits can be monetized) in the third report exceeds the costs by 30 to 1. All three reports were multi-year efforts (six years each for the first two reports, five years for the third report) and were subjected to extensive peer review, including review by the EPA's independent Science Advisory Board Council on Clean Air Act Compliance Analysis.

6. **All documents and communications referring or relating to any analysis EPA conducted on GHG regulations that were sent to the Office of Information and Regulatory Affairs (OIRA).**

The enclosed CD provides EPA analyses of the light-duty vehicle and medium- and heavy-duty vehicle GHG rules, the RFS2 and the Tailoring Rule that were sent to OIRA in connection with these rulemakings.

AC-12-000-0674

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 30 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable Fred Upton
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of January 13, 2012, to the U.S. Environmental Protection Agency's (EPA's) Administrator, Lisa P. Jackson, regarding the reporting date for the EPA's Chemical Data Reporting (CDR) rule. The Administrator has asked that I respond directly to your inquiry.

As you are aware, the EPA published the final CDR rule on August 15, 2011. The rule requires chemical companies to report a range of information on the chemicals they manufacture, use, and process, and establishes a five month window for reporting which begins on February 1, 2012, and concludes on June 30, 2012. Companies may submit their reports at any time during that period. The EPA provided a five month reporting period for this first round of reporting to provide additional time for companies to review and understand changes in the reporting requirements, gather the necessary information, and file through the agency's electronic reporting system.

As your letter notes, the agency held a webinar in mid-November with several hundred participants. The EPA made every effort to respond to the questions posed and provide all participants with an opportunity to pose questions. In addition, the EPA has a variety of guidance documents available on its Chemical Data Reporting web page to help companies comply with the reporting requirements (see www.epa.gov/cdr). Since the November 2011 webinar to assist industry in reporting for the 2012 CDR rule, the agency has posted six on-line training modules designed to walk companies through the Chemical Data Reporting process, as well as a set of frequently asked questions about the 2012 CDR reporting requirements. The training modules address basic information, including an overview of the CDR rule, new reporting requirements and how to complete Form U for 2012, as well as electronic reporting issues (e.g., registering with the EPA's Chemical Data Exchange for CDR reporting) and special topics, such as joint submissions. These training modules provide more detail than the webinar slides and can be viewed at any time.

The EPA has also established a general help email address for CDR questions: ecdrweb@epa.gov. The agency will continue to refine and add guidance materials to the website as necessary. Some of the questions included in your letter were addressed at the webinar in November and in more detail at a January 19, 2012, discussion with industry on issues relating to byproducts. I am also enclosing responses to the specific questions you included in your letter. These Q&As will be also added to the agency's web site so that the answers are publicly available.

We believe that the current five month window for companies to report, along with their ability to engage the agency directly on any questions or issues they may have, provides an adequate opportunity for reporting by June 30, 2012.

Again, thank you for your letter. I hope this information has been helpful to you. If you have additional questions, please contact me, or your staff may contact Mr. Sven-Erik Kaiser in the EPA's Office of Congressional and Intergovernmental Relations at (202) 566-2753.

Sincerely,

James J. Jones
Acting Assistant Administrator

Enclosure

AC-12-000-0674

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 30 2012

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

The Honorable John Shimkus
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Sincerely,

James J. Jones
Acting Assistant Administrator

Enclosure

Enclosure: Responses to Committee on Energy and Commerce Questions

Q. 1. Must a manufacturer report on its entire byproduct stream or just on the amount sent for recycling?

Response: If the person generating the byproduct stream did not newly manufacture a chemical substance in that byproduct stream, they do not need to report that substance. For example, where a byproduct is a mixture containing a previously manufactured solvent used in the manufacturing process, the solvent sent for recycling would not be subject to reporting.

Assuming the only post-manufacture commercial purpose of the byproduct stream is to recycle a portion of it, the portion not recycled need not be reported.

Q. 2. Must a metal extracted from a byproduct be reported under the rule?

Response: Typically, extraction of a metal compound is done through a chemical reaction involving that metal compound. If the extraction involves changing one chemical substance (e.g., metal compound) into a different chemical substance, then that different chemical substance has been manufactured and should be reported.

Q. 3. Is double reporting required for extracted substances if sold as individual chemicals?

Response: No. Whenever a substance is manufactured, as defined by TSCA and EPA regulations, it must be reported. EPA does not require double reporting for a single instance of manufacture.

Q. 4. What is an "exporter" under the rule?

Response: The CDR Rule does not define nor reference a definition for exporter because there are no reporting obligations under the Rule for exporting. Manufacturing includes importing, but not exporting.

Q. 5. Is reporting required if the same chemical changes concentration?

Response: No. Change in concentration does not trigger a need to report.

Q. 6. Must a used solvent that is resold be reported?

Response: The act of selling does not constitute manufacture under TSCA, and therefore, would not trigger a CDR reporting obligation.

13-000-2528

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 10 2013

OFFICE OF WATER

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Shuster:

Thank you for your letter dated February 8, 2013, regarding Hurricane Sandy disaster assistance funding. As you mentioned, the Disaster Relief Appropriations Act (P.L. 113-2) provided $600 million to the U.S. Environmental Protection Agency (EPA) for the State Revolving Fund programs under the Clean Water Act and the Safe Drinking Water Act. Congress directed the EPA to provide these funds to New York and New Jersey for *eligible projects whose purpose is to reduce flood damage risk and vulnerability or to enhance resiliency to rapid hydrologic change or a natural disaster at treatment works.*

The EPA's Office of Congressional and Intergovernmental Relations (OCIR) spoke with your staff on Thursday, March 14, 2013, about your request for regular financial and project updates and explained that we currently are making fundamental decisions to ensure that funding is directed to projects that will address a critical need and are eligible under the appropriations law. OCIR will keep you apprised of our progress as we administer these funds.

We are working closely with our Region 2 office on the issues of funding allocation and eligibility and are coordinating with the other federal funding agencies through the Hurricane Sandy Rebuilding Task Force. Ongoing discussions with Region 2, New Jersey and New York have provided critical input as we work to finalize the allocation method and eligibility definition. Issues raised during these discussions are being carefully considered as we develop implementation procedures for the Hurricane Sandy Relief Fund.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Greg Spraul in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-0255.

Sincerely,

Nancy K. Stoner
Acting Assistant Administrator

10-000-1535

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 30 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, D. C. 20515

Dear Chairman Oberstar:

This is in response to your April 17, 2008, letter requesting information about the final versions of the grant proposals submitted to the United States Environmental Protection Agency (EPA) from RTI International of Research Triangle Park, North Carolina and Environmental Resources Coalition of Jefferson City, Missouri in response to EPA's grant announcement "Comprehensive Environmental Assessments and Nutrient Management Plans for Livestock Feeding Operations." EPA is providing you the requested information pursuant to the Freedom of Information Act, 5 U.S.C. § 552(d), and EPA regulations at 40 C.F.R. § 2.209(b).

This letter also is being sent to inform you that some of the requested information may be claimed or considered to be confidential business information by the submitter. This information is provided on green paper. Although EPA has not made any determinations regarding these confidentiality claims, EPA respectfully requests that you treat the information as if it were confidential and that you not publicly disclose the contents of the information to which EPA is granting you access. The limited disclosure of this information is required by law and does not constitute a waiver of any confidentiality claims.

If you have any questions, please contact me or your staff may contact Jim Blizzard of this office at (202) 564-1695.

Sincerely,

for Christopher P. Bliley
Associate Administrator

AL-11-001-8452

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Laura Vaught

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Henry A. Waxman
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

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Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Laura J Vaught

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Diana DeGette
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Bobby L. Rush
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

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Sincerely,

Laura J Vaught

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Gene Green
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Frank Pallone, Jr.
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Mary Bono Mack
Chairman
Subcommittee on Commerce, Manufacturing, and Trade
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Madam Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable G. K. Butterfield
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 0 9 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Greg Walden
Chairman
Subcommittee on Communication and Technology
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 26, 2011, regarding recent lawsuits, settlements and consent decrees resolving litigation filed against the Environmental Protection Agency. Your letter requests responses to a number of detailed questions about lawsuits settled, pending or filed since January 1, 2009.

The EPA is currently working to identify, assemble and review the information requested in your letter. However, because of the comprehensive nature of the information requested, the EPA will need additional time to respond. Let me assure you that this request is a high priority, and we will provide a further substantive response as soon as possible.

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Sincerely,

Laura Vaught
Deputy Associate Administrator
for Congressional Affairs

cc: The Honorable Anna G. Eshoo
Ranking Member

AL-09-001-3728

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 27 2009

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter of September 14, 2009, in which Congressman Walden and you asked for information about the U.S. Environmental Protection Agency's use of the special pay authorities under Title 42 of the United States Code (42 U.S.C.). We are currently drafting a response to your letter in coordination with representatives from the Office of Personnel Management and the Department of Health and Human Services. Such coordination will ensure that you receive a comprehensive response to your inquiries.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Clara Jones in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

Craig E. Hooks
Assistant Administrator

cc: The Honorable Henry A. Waxman, Chairman
The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

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Craig E. Hooks
Assistant Administrator

cc: The Honorable Henry A. Waxman, Chairman
The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

bcc: Clara Jones
Dennis Franklin
Tom Dickerson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 2 7 2009

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Walden:

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The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

The Honorable Greg Walden
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Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

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Assistant Administrator

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The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations
bcc: Clara Jones
Dennis Franklin
Tom Dickerson

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 3 2010

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Congressman Barton:

Thank you for your letter of September 14, 2009, in which you and Congressman Walden requested information about the Environmental Protection Agency's (EPA or Agency) use of the special pay authorities under Title 42 of the United States Code (U.S.C.). The following information responds to the questions you have asked.

As you noted in your letter, EPA is an independent agency and is not part of the Department of Health and Human Services (HHS) or the Public Health Service. EPA's Title 42 special hiring authority is derivative in nature. In 1970, when EPA was created, Reorganization Plan No. 3 of 1970 transferred certain functions and responsibilities to the EPA Administrator from HHS (then known as the Department of Health, Education, and Welfare). This statutory authority was recently confirmed under EPA's current appropriations act, the Omnibus Appropriations Act of 2009, Public Law 111-8, which allowed EPA's Office of Research and Development to employ up to thirty (30) persons under authority provided by 42 U.S.C. § 209. Public Law 111-8 amended and broadened similar language that first appeared in EPA's 2006 Appropriations Act, Public Law 109-54.1 As HHS has done, EPA issued its own implementing regulations for this special hiring authority, found at 40 C.F.R. Part 18.

EPA did not receive a delegation from HHS to exercise the Title 42 special hiring authority, nor is such a delegation required. Public Law 109-54 required EPA to consult with the Office of Personnel Management (OPM) and EPA did so in 2006, at the time EPA promulgated regulations and developed its own internal Agency Order and Operating Manual for Title 42 hiring. OPM thereafter made recommendations and approved EPA's procedures. OPM did not approve individual appointments to Title 42 positions at EPA; such approval by OPM is not required.

EPA believes 42 U.S.C. § 209(f) is not limited in application to "scientist employees" because the statutory language in Public Law 111-8 expressly uses the term "persons." Further, § 209 provides for the employment of special consultants and scientific fellows. Within EPA, all of the Title 42 appointees are classified in scientific occupations.

[1] In November 2009, this authority was affirmed and extended until 2015. See Conference Report to H.R. 2996.

There are no salary caps imposed by § 209(f) or (g) or by Public Law 111-8, but EPA's own internal Agency guidance provides that the total compensation paid to any Title 42 employee may not exceed a specified fixed total per annum.

Currently, EPA has 11 employees receiving compensation under the Title 42 program. Five of the Title 42 employees were converted to Title 42 appointments from the federal Civil Service. The total amount of money EPA has spent on the increased salaries for these conversions is just over $22,943. This figure represents an average increase of 4.76% per conversion. EPA has not paid a retention bonus/incentive to any of the individuals getting Title 42 pay. In fact, one of the employees who is currently getting Title 42 pay *was* receiving a retention bonus/incentive *prior* to his conversion to a Title 42 appointment, but that retention bonus/incentive was ended at the time of the conversion.

There are ten employees who currently receive Title 42 annual salaries above $153,000. The aggregate amount that EPA has paid in excess of $153,000 for all of the Title 42 salaries since the inception of the program is $179,387.70. In 2008, the highest annual total compensation paid to a Title 42 employee was $199,909 (which was also the highest annual salary paid that year). For 2009, the highest annual salary is $209,904, with an award bringing the total compensation to $210,275.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call David Piantanida in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-8318.

Sincerely,

Craig E. Hooks
Assistant Administrator

cc: The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce

The Honorable Greg Walden, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR - 3 2010

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Greg Walden
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Congressman Walden:

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As you noted in your letter, EPA is an independent agency and is not part of the Department of Health and Human Services (HHS) or the Public Health Service. EPA's Title 42 special hiring authority is derivative in nature. In 1970, when EPA was created, Reorganization Plan No. 3 of 1970 transferred certain functions and responsibilities to the EPA Administrator from HHS (then known as the Department of Health, Education, and Welfare). This statutory authority was recently confirmed under EPA's current appropriations act, the Omnibus Appropriations Act of 2009, Public Law 111-8, which allowed EPA's Office of Research and Development to employ up to thirty (30) persons under authority provided by 42 U.S.C. § 209. Public Law 111-8 amended and broadened similar language that first appeared in EPA's 2006 Appropriations Act, Public Law 109-54.[1] As HHS has done, EPA issued its own implementing regulations for this special hiring authority, found at 40 C.F.R. Part 18.

EPA did not receive a delegation from HHS to exercise the Title 42 special hiring authority, nor is such a delegation required. Public Law 109-54 required EPA to consult with the Office of Personnel Management (OPM) and EPA did so in 2006, at the time EPA promulgated regulations and developed its own internal Agency Order and Operating Manual for Title 42 hiring. OPM thereafter made recommendations and approved EPA's procedures. OPM did not approve individual appointments to Title 42 positions at EPA; such approval by OPM is not required.

EPA believes 42 U.S.C. § 209(f) is not limited in application to "scientist employees" because the statutory language in Public Law 111-8 expressly uses the term "persons." Further, § 209 provides for the employment of special consultants and scientific fellows. Within EPA, all of the Title 42 appointees are classified in scientific occupations.

[1] In November 2009, this authority was affirmed and extended until 2015. See Conference Report to H.R. 2996.

There are no salary caps imposed by § 209(f) or (g) or by Public Law 111-8, but EPA's own internal Agency guidance provides that the total compensation paid to any Title 42 employee may not exceed a specified fixed total per annum.

Currently, EPA has 11 employees receiving compensation under the Title 42 program. Five of the Title 42 employees were converted to Title 42 appointments from the federal Civil Service. The total amount of money EPA has spent on the increased salaries for these conversions is just over $22,943. This figure represents an average increase of 4.76% per conversion. EPA has not paid a retention bonus/incentive to any of the individuals getting Title 42 pay. In fact, one of the employees who is currently getting Title 42 pay *was* receiving a retention bonus/incentive *prior* to his conversion to a Title 42 appointment, but that retention bonus/incentive was ended at the time of the conversion.

There are ten employees who currently receive Title 42 annual salaries above $153,000. The aggregate amount that EPA has paid in excess of $153,000 for all of the Title 42 salaries since the inception of the program is $179,387.70. In 2008, the highest annual total compensation paid to a Title 42 employee was $199,909 (which was also the highest annual salary paid that year). For 2009, the highest annual salary is $209,904, with an award bringing the total compensation to $210,275.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call David Piantanida in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-8318.

Sincerely,

Craig E. Hooks
Assistant Administrator

cc: The Honorable Henry A. Waxman, Chairman
Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigations

AL-09-000-3556

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 03 2009

OFFICE OF
AIR AND RADIATION

The Honorable Edward J. Markey
Chairman, Subcommittee on Energy and Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

Thank you for your letter dated February 27, 2009, to Administrator Jackson, in which you requested that the U.S. Environmental Protection Agency (EPA) estimate the economic impacts of the Committee on Energy and Commerce draft climate change legislation. The Administrator asked that I respond to your letter.

We would be pleased to conduct this analysis. As you know, we recently held a meeting with your staff to discuss the details, timing, and assumptions needed to conduct the analysis.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3668.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Acting Assistant Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 0 3 2009

OFFICE OF
AIR AND RADIATION

The Honorable Henry A. Waxman
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Waxman:

Thank you for your letter dated February 27, 2009, to Administrator Jackson, in which you requested that the U.S. Environmental Protection Agency (EPA) estimate the economic impacts of the Committee on Energy and Commerce draft climate change legislation. The Administrator asked that I respond to your letter.

We would be pleased to conduct this analysis. As you know, we recently held a meeting with your staff to discuss the details, timing, and assumptions needed to conduct the analysis.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-3668.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Acting Assistant Administrator

AL-09-000-637

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 2 9 2009

OFFICE OF
AIR AND RADIATION

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Chairman Waxman:

Thank you for your April 3, 2009 letter to President Obama, co-signed by one of your colleagues, encouraging the Administration to offer an amendment to the Montreal Protocol to regulate the production and consumption of hydrofluorocarbons (HFCs).

The Administration submitted a letter on May 4, 2009, expressing interest in this subject to the Ozone Secretariat of the Montreal Protocol. In that letter, the Administration expressed interest in how best to address the projected future growth in HFCs and how to promote the development of alternatives. However, in the brief time available to us, we have not been able to complete our analysis or to fully consider how amending the Montreal Protocol to address HFCs would affect negotiations now taking place under the U.N. Framework Convention on Climate Change with respect to the post-2012 period. For these reasons, we were not able to submit a specific amendment proposal.

We plan to continue actively studying and analyzing this issue. Recent analysis of various proposals by U.S. Environmental Protection Agency (EPA) staff shows that significant climate benefits could be achieved through a phase down of HFCs, assuming both developed and developing country commitments. The EPA analysis assumes a baseline that is an average of 2004, 2005, and 2006 consumption and control measures starting in 2012. EPA's analysis is based on stepwise reductions of approximately 10 percent of baseline by 2015, 25 percent by 2020, 50 percent by 2030, and 65 percent by 2039. It also assumes a 10-year delay between developed and developing country commitments. This phase down modeled by EPA estimates cumulative emissions reductions of roughly 66,000 to 80,000 million metric tons of carbon dioxide equivalent through 2050.

We note that the Governments of Mauritius and the Federated States of Micronesia have submitted a specific proposal to amend the Montreal Protocol to provide for a phase down in HFC consumption and production. We understand that their action will put this issue on the agenda for the Meeting of the Parties to the Montreal Protocol in November. Their proposal will also help to focus discussion among Parties in connection with the July workshop in Geneva.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Josh Lewis, in EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-2095.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Acting Assistant Administrator

AL-10-000-3691

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 3 2010

THE ADMINISTRATOR

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515-6115

Dear Congressman Barton:

Thank you for the letter that you sent to me and Secretary of Energy Steven Chu on March 15, 2010. In it, you ask that President Obama's administration take appropriate action to ensure that the InterAcademy Council's review of the Intergovernmental Panel on Climate Change's (IPCC's) processes and procedures will be careful and transparent.

The Environmental Protection Agency (EPA) does not fund the InterAcademy Council or participate in its governance. Certainly, I agree that the Council's review should be careful and transparent. Fortunately, the statement issued by the Council on March 10, 2010 indicates that the Council concurs.

I am enclosing a copy of the letter that EPA Assistant Administrator Gina McCarthy sent to you on March 19, 2010. That letter describes EPA's use of peer-reviewed scientific findings compiled in the IPCC's Fourth Assessment report.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at 202-564-3668.

Sincerely,

Lisa P. Jackson

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 19 2010

OFFICE OF
AIR AND RADIATION

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515-6115

Dear Congressman Barton:

Thank you for your letter of February 4, 2010, co-signed by Congressman Greg Walden, concerning the U.S. Environmental Protection Agency's (EPA) review of the science underlying the *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act* (herein referred to as the Findings). Administrator Jackson has asked me to respond on her behalf. While many of your comments and questions were addressed in detail in EPA's Response to Comments document, I am happy to provide responses to your inquiries. In addition, EPA has received petitions to reconsider the Findings and we will be glad to provide you with our final response to the petitions when it is complete.

As you know, as a result of the Supreme Court's decision in *Massachusetts v. EPA*, the Agency became obligated to determine whether greenhouse gas emissions endanger the health or welfare of the American people. After EPA staff conducted a comprehensive survey of the soundest available science and carefully reviewed hundreds of thousands of public comments, Administrator Jackson determined last December that greenhouse gas emissions do endanger Americans' health and welfare.

The science supporting the Findings is clear and convincing based on observational data and multiple lines of evidence and types of analyses. Our current understanding of climate science and the causal linkage between human-caused greenhouse gas emissions and warming of the climate system has not been altered by the allegations regarding the United Nations International Panel on Climate Change (IPCC). The Findings do not rely on a single line of evidence, a single study, or a single assessment report. Other assessment reports, in particular those of the U.S. Global Change Research Program and National Research Council have also examined the information, taken a fresh look at the literature and existing assessments, and reached similar compelling conclusions regarding the threat of climate change. In its latest June 2009 report, the U.S. Global Change Research Program concluded that the climate is changing and the temperature is rising; that human activities are a major cause of this warming; that the consequences of this warming are significant and disruptive; and that risks to human health will increase as a result of climate change. Numerous National Research Council reports also support these conclusions.

Major scientific organizations in the United States, including the American Geophysical Union, American Institute of Physics, and the American Meteorological Society, among others, have issued statements affirming the human contribution to climate change and its impacts. Individual scientists have also spoken out publicly regarding the climate threat. In Texas, faculty from prominent universities published a joint statement that given the results of their own research and the "immense body of independent research conducted around the world," there is "no doubt" that heat-trapping gases from human activities are very likely responsible for most of the warming observed over the past half century, and that higher amounts of these gases in the atmosphere increase the risks to humans and the environment.[1]

In response to your questions regarding the development and peer review of the Findings' Technical Support Document (TSD), a full discussion of this process is described in the Response to Comments (RTC). As noted there, EPA did not develop new science as part of this action and rather synthesized the existing peer-reviewed assessment literature. The Agency relied primarily on the major assessment reports which collectively reflect the current state of knowledge on climate change science, vulnerabilities and potential impacts. These assessments are comprehensive in their coverage of greenhouse gases and climate change, and address the different stages of the emissions-to-impact chain necessary for the endangerment analysis. The assessments synthesize thousands of individual studies and convey the consensus conclusions on what the body of scientific literature tells us. The few examples of errors in the IPCC Fourth Assessment report that have come to light do not negate the credibility of the entire work of the IPCC. The Fourth Assessment report is a vast body of work contained in three volumes and a synthesis report comprising 2,927 pages, which cites thousands of references and states thousands of individual conclusions. Given the limited number and nature of the concerns raised, it would be premature to make the leap that either the overall integrity of the IPCC process or its conclusions are now in question.

We did not cite or rely on the specific Himalayan glacier study in question, nor did we rely on any other specific details about impacts in particular countries around the world in reaching our assessment of the threat of climate change to the health and welfare of U.S. citizens. The Findings were developed after considering observed and projected effects of greenhouse gases in the atmosphere, their effect on climate, and the public health and welfare risks and impacts associated with such climate change. The focus was on public health and welfare risks and impacts within the United States. Some evidence with respect to impacts in other world regions was also examined and these impacts serve to strengthen the case for endangerment because public health and welfare impacts in other world regions can in turn adversely affect the United States.

EPA submitted the TSD for review by a group of twelve federal climate experts, representing a range of technical specialties, in order to ensure that the TSD accurately summarized the conclusions and associated uncertainties from the assessment reports. The federal expert review was only one part of a much larger process of developing the TSD from

[1] Statements from faculty at Texas A&M (http://atmo.tamu.edu/weather-and-climate/climate-change-statement) and the University of Texas (http://www.ig.utexas.edu/jsg/css/statement.html)

2007 until the present. In addition to the three rounds of technical review by the 12 federal experts, the TSD underwent three rounds of internal EPA review and two rounds of public comment. All documents reflecting the 2007 and 2009 Federal Expert Review of draft TSDs were released to you on September 3, 2009, in response to a previous request.

In response to your question concerning the role of EPA's Office of Research and Development (ORD) in the preparation of the TSD, staff from ORD reviewed and commented on the TSD throughout its development. A number of sections in the TSD were drafted by ORD staff, and ORD also participated in the intra-agency review process.

Concerning EPA's Action Development Process for developing the Findings, this process complied with all applicable Agency guidelines. An analytic blueprint is a document that details the Agency's plans "for data collection and analyses that will support development of a specific action" and serves to "expand EPA's opportunities to consider a broad range of regulatory (and non-regulatory) strategies...." EPA's senior leadership considered options for and provided significant input on developing the Findings. In light of the fact that the Findings do not themselves impose any requirements on industry or other entities, and that no new science or economic analyses were appropriate for this action, an official analytic blueprint document was not considered necessary.

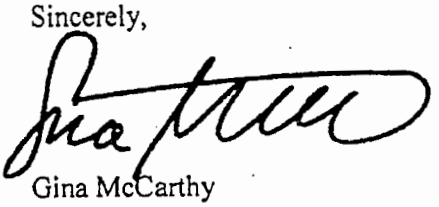
In response to your question about contractor involvement in the preparation of the RTCs, EPA staff exclusively handled the substantive comment evaluation and response process, including analysis of the comments and development of comment responses. An EPA contractor played a limited role in the process, providing logistical and administrative support. For example, given the volume of comments received, the contractor helped to sort comments, which was important for ensuring that each significant argument, assertion and question contained within the totality of comments received a response. The contractor also tracked sources that were referenced in the public comments submitted, collected copies of the referenced sources for review by EPA staff, and provided non-technical copy editing of the documents. EPA staff evaluated and responded to the issues raised in the comments. The contractor did not have a substantive role in preparing the responses to public comments received or in EPA's use of scientific assessment reports, therefore we have no documents responsive to your request.

Regarding your questions on EPA's evaluation of the IPCC process, we note that the IPCC reports were one of several broad assessment reports that the Agency drew upon in developing the Findings, along with the wealth of information submitted through public comment to inform the decision. In considering the IPCC as a source for the Findings' TSD, EPA recognized that the IPCC reports have been officially vetted and approved by the U.S. Government through an open and transparent inter-agency review process led by the White House's Office of Science and Technology Policy. Given the involvement of EPA staff and other U.S. officials during the development of the IPCC reports, and the rigorous vetting and approval of IPCC products across the U.S. Government and by other governments, EPA determined that a duplicative evaluation of IPCC's conclusions would not be warranted.

Nonetheless, in considering public comments on the Proposed Findings and preparing the Final Findings, EPA did evaluate the review processes of the IPCC and other cited assessments (such as those of the US Global Change Research Program and the National Research Council). EPA's conclusions from this evaluation are described in the Final Findings and in the RTC document (RTC).[2] In particular, Volume 1 of the RTC, General Approach to the Science and Other Technical Issues, includes extensive discussion of EPA's use of assessment literature including the IPCC reports. On the basis of its evaluation, EPA concluded that the review processes of all of the assessment reports cited were robust, and that the use of these assessments, of which IPCC is one, as the primary basis for the Findings is consistent with the Information Quality Act (IQA) and internal information quality guidelines.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at 202-564-3668.

Sincerely,



Gina McCarthy
Assistant Administrator

[2] The Findings and eleven-volume Response to Comments document may be accessed at http://www.epa.gov/climatechange/endangerment.html

AC-09-000-9707

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 22 2009

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Darrell E. Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Issa:

Thank you for your letter of June 23, 2009 concerning the *Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(1) of the Clear Air Act* that EPA issued in April 2009.

I appreciate your interest in this important matter. As you may know, much of the underlying information and analysis for the proposed endangerment finding had been included in the July 2008 *Advanced Notice of Proposed Rulemaking: Regulating Greenhouse Gas Emissions under the Clean Air Act* (73 FR 44353) and the supporting Technical Support Document in the docket. Earlier this year, the Office of Air and Radiation also convened a cross-office workgroup to develop the endangerment proposal. This workgroup received input from across the Agency, including the National Center for Environmental Economics. EPA also held two public meetings and is currently considering the comments it received as part of a 60-day public comment period on the proposal. I am confident that the proposed endangerment finding reflects the best available science and was developed through careful deliberation as part of a robust internal process.

EPA will need additional time to respond to your requests for records. In the interim, please find enclosed copies of documents concerning the development of the endangerment proposal that EPA has recently released under the Freedom of Information Act. Your request is a high priority, and we will respond further to your request as soon as possible.

Again, thank you for your letter. If you have any questions about this, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

Arvin Ganesan
Deputy Associate Administrator
For Congressional Affairs

cc: The Honorable Edolphus Towns
Chairman

AC-11-001-7569

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 27 2012

OFFICE OF
AIR AND RADIATION

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of October 17, 2011, to Associate Administrator Michael L. Goo, requesting that the EMPAX Computable General Equilibrium (CGE) model be made available to the public. Mr. Goo has asked that I respond on his behalf.

We agree with you that the peer-reviewed EMPAX model should be publicly available, and we are working to make this model available through EPA's website. In addition to providing access to the EMPAX model, we will provide information on model operating requirements, including access to sources of data required to configure and run the model. For example, similar to many sophisticated economic models, EMPAX requires additional standard mathematical software to run the model, as well as economic input data. EPA's documentation for the model, which will also be available on the website, will explain what software and economic input data we use.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Diann Frantz in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,

Gina McCarthy
Assistant Administrator

AC-11-001-7674

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

NOV 15 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

I am responding to your letters sent to Margo Oge and me on October 18, 2011, asking for clarification on statements made at the October 12, 2011 hearing. The U.S. Environmental Protection Agency (EPA) establishes emissions standards for cars and trucks, and does not establish fuel economy standards. Our emissions standards for greenhouse gases (GHGs) differ from fuel economy standards in several important ways. EPA's emissions standards are designed to address the public health and welfare problems from air pollution.[1] The GHG standards control emissions of four GHGs, carbon dioxide (CO_2), nitrous oxide (NO), methane (CH_4), and hydroflourocarbons (HFCs), some of which have no overlap with fuel efficiency. In addition, the GHG emissions standards are defined in terms of grams of emissions of GHG per mile, not miles per gallon. While a gasoline and a diesel car may have identical miles per gallon for fuel economy, they will have significantly different CO_2 grams per mile because of differences in the carbon content of the fuel. Likewise, under EPA's GHG standards, operating a vehicle on electricity generally leads to a compliance value of zero grams per mile tailpipe emissions, while operation on electricity receives a specified mile per gallon value for fuel economy under the CAFE program.

The EPA has always recognized that, generally, the same technologies are used to reduce emissions of CO_2 and to increase fuel economy. Technology that makes a vehicle more fuel efficient results in using less fuel to travel a given distance or perform a certain amount of work, which reduces emissions of CO_2 and increases fuel economy. This technology overlap led EPA and the National Highway Traffic Safety Administration (NHTSA) to develop a joint technological basis in establishing the National Program.[2] Our joint technical work provided the basis for the successful 2012-2016 model year joint rulemaking, and will provide the same kind of robust, data-driven scientific basis for the proposal for 2017-2025 model year standards.

With respect to the scope of the express preemption provision in the Energy Policy and Conservation Act (EPCA), 49 U.S.C. 32919(a), our previous response to question 12 of your letter of September 30,

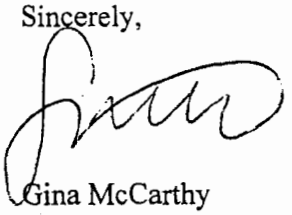
[1] As discussed above, in *Massachusetts v. EPA* the Supreme Court held that GHGs are air pollutants under the Clean Air Act, and that EPA must determine whether emissions of GHGs from cars and trucks "*cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare*" – which we have done through the Endangerment Finding. The Court further held that if EPA made such a determination, then EPA must act under Section 202(a) of the CAA —our authority for setting motor vehicle emission standards.

[2] 75 Fed. Reg. 25324, 25327 (May 7, 2010).

2011, explains the relationship of this EPCA provision to the Clean Air Act provision for a waiver of preemption of state motor vehicle emissions standards. As NHTSA has responsibility for setting federal fuel economy standards under EPCA, I would also refer you to the response to question number 23 in Secretary LaHood's letter of October 17, 2011, responding to your letter of September 30, 2011. In that response, Secretary LaHood explained that the National Program "simply does not implicate the statutory preemption provision." In light of that statement, there is no reason to address the scope of the EPCA preemption.

I trust the information provided above is useful. If you have further questions, please contact me or your staff may call Diann Frantz in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3668.

Sincerely,



Gina McCarthy
Assistant Administrator

AC-11-000-6995

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 22 2011

OFFICE OF
AIR AND RADIATION

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Mr. Chairman:

Thank you for your letter of May 2, 2011, following up on my testimony before the House Oversight and Government Reform Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending regarding the impact of the U.S. Environmental Protection Agency's greenhouse gas (GHG) regulations on small business. I have provided responses to your enumerated questions in the enclosed document. In addition, I am including documents responsive to your request on the enclosed CD.

As I stated in my testimony before the Subcommittee, the EPA is taking a common sense, phased approach to meeting our obligations under the Clean Air Act to address carbon pollution. The Agency is keenly aware of the concerns of small businesses in regard to greenhouse gas standards, and has taken numerous steps to eliminate or minimize the impacts of such standards on small businesses. The EPA has a long history under the Clean Air Act of protecting human health and the environment while supporting strong economic growth. The Agency is applying the same tools that we have been using for the last 40 years to protect public health to now address greenhouse gas emissions. Those tools have proven their worth over the years in improved public health, economic and job growth, and technological innovation.

The EPA undertakes extensive economic analysis of the costs and benefits of its Clean Air Act standards, including the greenhouse gas standards addressed by your letter. As indicated in the enclosed responses, the Agency has fully complied with its obligations to analyze its greenhouse gas standards under section 317 of the Clean Air Act. Section 321 of the Clean Air Act authorizes the EPA to investigate specific allegations that actions under the Act have resulted or will result in job losses. The EPA has not received any request under section 321 to investigate any such alleged impacts of those standards. Finally, our analyses of the cumulative benefits and costs of Clean Air Act programs have consistently shown large benefits that greatly exceed, by factors of 30 or more, the costs of implementing the Act.

Again, thank you for your letter and for your interest in this important subject. I look forward to continuing to work with you. If you have any questions regarding the subject of this response, please contact me or your staff may call Tom Dickerson in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3638.

Sincerely,

Gina McCarthy
Assistant Administrator

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Member

Responses to Questions and Requests

1. **A full and complete explanation as to whether a section 317 analysis has been completed for the Car Rule, Tailoring Rule, and Endangerment Finding and submission of any of these analyses.**

The EPA was not required to do a section 317 analysis of the Endangerment Finding because that finding is not an action listed in section 317(a), and thus was not an action to which section 317 applies.

The EPA met its obligations under section 317 for both the Car Rule and the Tailoring Rule. The economic analyses completed by the EPA to support the Car Rule and the Tailoring Rule fully satisfy the requirements of section 317, including both the procedural requirements in section 317(b) and the substantive requirements for the analysis in section 317(c).

The text and legislative history of section 317 make clear that Congress intended this provision to be applied pragmatically. Section 317(d) states that "[t]he assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under [the Clean Air Act]." See also 123 Cong. Rec. 26850 (Aug. 4, 1977) (Senate consideration of the Conference Report) ("Consequently, the Administrator may make reasonable judgments about which analyses must be done to comply with this section and the depth of analysis required.").

An overview of how each of the substantive requirements of section 317(c) was satisfied for both the Car Rule and the Tailoring Rule follows. For each of the two rules, this explanation is organized on the basis of the five paragraphs of section 317(c).

<u>Car Rule</u>:

"(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;"

The rulemaking fully assesses the costs of the model year (MY) 2012-2016 standards, and these assessments are fully described in the preamble and Regulatory Impact Analysis (RIA). The EPA's cost assessment included a full range of costs, including costs for individual automobile manufacturers, industry average per-vehicle compliance costs, industry average technology outlays, and consumer savings due to saving money on fuel costs. See Preamble Section III.H.2 Costs Associated with the Vehicle Program (75 Fed. Reg. 25,513) (May 7, 2010) and Section III.H.4 Reduction in Fuel Consumption and Its Impacts (75 Fed. Reg. 25,516); RIA Chapter 6: Vehicle Program Costs Including Fuel Consumption Impacts. The EPA also explained in detail how the effective dates for the standards provided sufficient lead time for compliance, and how the choice of standard stringency was tied to the industry's vehicle redesign cycles to assure the most cost effective means of compliance. 75 Fed. Reg. 25,467-68. Similar analyses were part of the record for the proposed rule.

In addition, the EPA assessed the impacts and costs of both more and less stringent standards. Specifically, the EPA assessed standards that would reduce CO2 emissions at a rate of 4% per

AC-11-000-5627

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 14 2011

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

Thank you for your April 8 letter requesting information on the Environmental Protection Agency's plan in the event of a lapse in the Congressional appropriations that fund the Federal Government. Detailed information on EPA's plan is posted on the Agency's website, at http://www.epa.gov/adminweb/images/EPAContingencyPlanAPRIL82011.pdf.

Sincerely,

David McIntosh
Associate Administrator

cc: The Honorable Elijah E. Cummings
Ranking Minority Member

AC-11-000-0133

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 19 2011

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your two letters of December 29, 2010. They enclose your requests for copies of documents, and responses to numerous specific questions, regarding: the appointment of Cameron Davis as an Environmental Protection Agency ("EPA") official; the planning of travel by EPA officials to events with elected officials or candidates; and Recovery Act grants that were awarded to particular school districts in Ohio for retrofitting school buses.

We appreciate your interest in these matters and are committed to providing you with the information necessary to satisfy the Committee's oversight activities to the extent possible, consistent with Constitutional and statutory obligations. Your requests are a high priority, and work on them is currently in progress.

Again, thank you for your letters. We look forward to working with you and your staff on these and future issues. If you have any questions, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

David McIntosh
Associate Administrator

cc: The Honorable Elijah E. Cummings
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 28 2011

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of December 29, 2010 following up on a previous request for information from your Committee regarding American Recovery and Reinvestment Act (ARRA) funded Diesel Emissions Reduction Act (DERA) grants. You expressed concern regarding DERA funding awarded to identified school districts in the State of Ohio. We have examined the identified awards and offer the following information.

- EPA made a federal formula grant award (award # 00E83501) on April 8, 2009 to the Ohio Environmental Protection Agency (Ohio EPA) in the amount of $1,730,000 to support a grant and loan program administered by the State that was designed to achieve significant reductions in diesel emissions. The award was authorized in accordance with Title VII, Subtitle G, Section 793 of the Energy Policy Act of 2005, codified at 42 U.S.C. 16133. The award was funded with funds appropriated by the American Recovery and Reinvestment Act of 2009 and the award was subject to terms and conditions imposed by the Act. The Ohio EPA distributed funds from this award through a statewide competitive Clean Diesel School Bus Program. (http://www.epa.state.oh.us/oeef/schoolbus.aspx).

- State formula grants, such as the award made to the Ohio Environmental Protection Agency, are made available by the State to sub-recipients for projects that reduce diesel emissions and diesel fuel usage. The Ohio EPA, as the prime recipient of the award, is required to make subsequent awards (subgrants and loans) to qualifying subgrantee or loan applicants throughout their State.

- The awards that are the subject of your inquiry were made by Ohio EPA. The US Environmental Protection Agency was not involved in the selection of the subrecipients.

- Ohio EPA made all decisions to fund sub-recipients and as such, should maintain all records related to project descriptions, criteria used to make the sub-awards, and the process used for award. The Ohio EPA point-of-contact for their DERA grant award is:

  Carolyn Watkins
  Chief, Office of Environmental Education
  Administrator, Ohio Environmental Education Fund
  Administrator, Ohio Clean Diesel School Bus Fund
  Ohio EPA
  P.O. Box 1049
  Columbus, OH 43216-1049
  Phone: (614) 644-2873
  e-mail carolyn.watkins@epa.state.oh.us

In addition, your letter states that Office of Management and Budget (OMB) Circular A-110 requires that Federal grant awards be made on a competitive basis. This statement is based on an interpretation of language in the Circular at 2 C.F.R. § 215.43, *Competition*, providing that "[a]wards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient...."

EPA's Office of General Counsel (OGC) has reviewed this matter and advised that OMB Circular A-110 does not apply to the grant awarded by EPA to the State of Ohio. This is because, as noted at 2 CF.R. § 215.0 (a), the purpose of the Circular is to provide guidance to Federal agencies on the administration of grants to institutions of higher education, hospitals and other non-profit organizations, and thus does not affect grants to State, local or tribal governments. Further, OGC has advised that the quoted language on competition refers only to procurement contracts awarded by non-profit organizations with grant funds as opposed to the award of grants by a Federal agency. This conclusion is consistent with the requirements of the Federal Grant and Cooperative Agreement Act, 31 U.S.C. § 6301 et seq., which encourages, but does not require, that Federal grants be awarded competitively.

EPA does not award DERA State program funds competitively. EPA is required to allocate funds under the DERA State program in accordance with the statutory formula in Title VII, Subtitle G, Section 793 of the Energy Policy Act of 2005, as amended. EPA's grant to the State of Ohio was a DERA State formula grant. Because Ohio is a State grantee, its grant is governed by the Federal common rule for grants to States, local and tribal governments codified by EPA at 40 C.F.R. Part 31. Under Section 31.37 of the common rule, *Subgrants*, States follow State law and procedures when awarding subgrants. Based on these regulations, Ohio selected its subrecipients without EPA involvement.

We appreciate your interest in these important matters, and are committed to providing you with the information necessary to satisfy the Committee's oversight activities to the extent possible. If you have any questions about this, please contact me, the Senior Accountable

Official for ARRA, or your staff may call Tom Dickerson of our Office of Congressional and Intergovernmental Relations at (202) 564-3638.

Sincerely,

Craig E. Hooks
Assistant Administrator

cc: The Honorable Elijah E. Cummings
Ranking Member

AC-11-080-0134

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 19 2011

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your two letters of December 29, 2010. They enclose your requests for copies of documents, and responses to numerous specific questions, regarding: the appointment of Cameron Davis as an Environmental Protection Agency ("EPA") official; the planning of travel by EPA officials to events with elected officials or candidates; and Recovery Act grants that were awarded to particular school districts in Ohio for retrofitting school buses.

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Again, thank you for your letters. We look forward to working with you and your staff on these and future issues. If you have any questions, please contact me or your staff may call Tom Dickerson of my staff at (202) 564-3638.

Sincerely,

David McIntosh
Associate Administrator

cc: The Honorable Elijah E. Cummings
Ranking Member

AC-11-001-5139

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 28 2011

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Frank D. Lucas
Chairman
Committee on Agriculture
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Lucas:

Thank you for the opportunity to respond to your September 8, 2011 letter and the questions for the record following the March 10, 2011, hearing on the impact of EPA regulation on agriculture. The attached document has responses for more than 80 percent of the questions. I am sending this set of approved responses rather than delay the entire package for the small number of responses still outstanding. The remaining responses are nearing approval and will be forwarded to you as soon as possible. I hope that this information is useful to you and the members of the committee.

If you have any further questions, please contact me or your staff may call Sven-Erik Kaiser in my office at (202) 566-2753.

Sincerely,

Arvin Ganesan
Associate Administrator

Attachment

House Committee on Agriculture
"The Impact of EPA Regulation on Agriculture"
Questions for the Record
March 10, 2011
Set 1

Chairman Frank D. Lucas, Oklahoma

Lucas 4. Can you comment on the use of synthetic gypsum to protect the Chesapeake Bay from nutrient runoff funded by the USDA Conservation Innovation Grants Program and the projects and studies underway and planned in the Great Lakes Region for the same effect.

Answer: We support the use of this technology as one approach for reducing nutrient runoff from agricultural operations through soil amendments that increase phosphorus adsorption capacity of farmland soils and buffer treatment to adsorb phosphorus before field runoff enters the streams and the Chesapeake Bay. Note that this is only one of many approaches that farmers can take to reduce nutrient losses from their operations. We have highlighted this approach along with other cost-effective, proven practices for reducing nutrients from agricultural operations in the *Guidance for Federal Land Management in the Chesapeake Bay Watershed* (http://www.epa.gov/nps/chesbay502/). Although this document was developed for federal lands, it acknowledges that a majority of land in the Chesapeake Bay watershed is nonfederal land, and also recognizes that the same set of tools and practices are appropriate for both federal and nonfederal land managers to restore and protect the Chesapeake Bay.

Representative Timothy V. Johnson, Illinois

Johnson 1. Ms. Jackson, one of the greatest challenges in rural America right now is addressing urgent water and wastewater needs for small rural communities. At the same time, the EPA continues to add layers of stringent regulations on these communities, requiring billions of dollars in new investments throughout each state. When developing a TMDL does the EPA consider the impact the implementation of the TMDL may have on water and sewer rates, especially across small rural communities? What remedies do you offer if the community is unable to finance changes to their system or build a new system?

Answer: The EPA recognizes the particular needs faced by rural communities in maintaining their water and wastewater infrastructure, and the EPA seeks to ensure that its programs are implemented in ways that recognize these specific challenges. In the context of a total maximum daily load (TMDL), most TMDLs are completed by the states, and this is the EPA's preference. TMDLs are approved by the EPA, and to receive approval, they must identify pollutant reductions adequate to meet water quality standards, including a margin of safety. This evaluation does not specifically consider costs. However, the EPA encourages states to take into consideration implementation issues, such as the cost of implementation, when they develop TMDLs, although implementation plans for TMDLs are not required by federal law. The TMDL development process also provides opportunities for stakeholder input on how the TMDL would be implemented. States may also have the opportunity, should they wish to do so consistent with the Clean Water Act, to adopt temporary variances from their water quality standards, or they can set lower water quality goals to avoid widespread social or economic impacts. These changes would also require EPA approval.